TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 130 145.

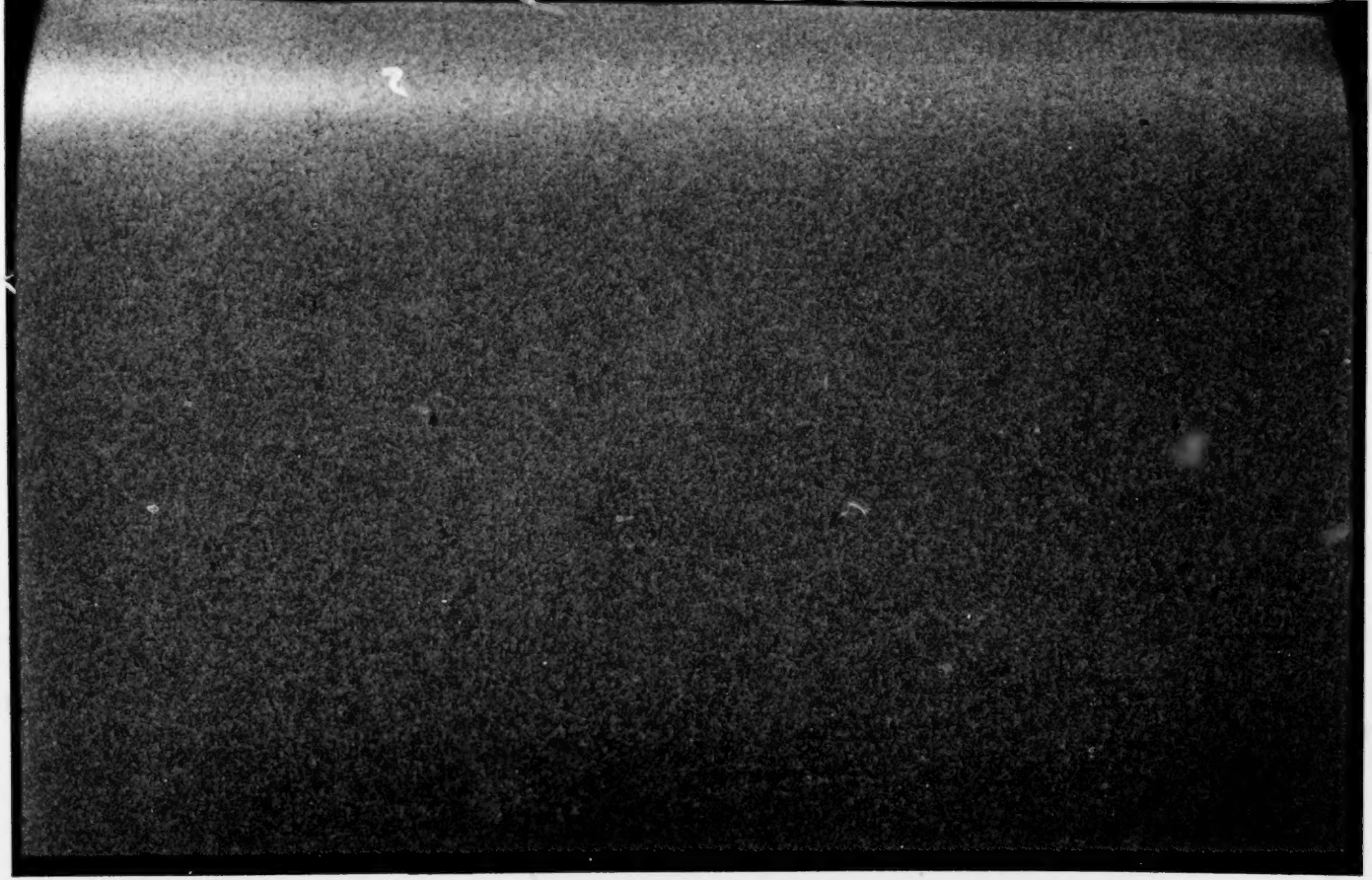
H. DRUSILLA MITCHELL, PETITIONER,

vs.

THE FIRST NATIONAL BANK OF CHICAGO.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

(17,229)



(17,390.)

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THE FIRST NATIONAL BANK OF CHICAGO.

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a United States Circuit Court of Appeals for the Second Circuit.

FIRST NATIONAL BANK OF CHICAGO, Plaintiff in Error,
vs.
H. DRUSILLA MITCHELL ET AL., Defendants in Error.

Transcript of Record.

Error to the circuit court of the United States for the district of Connecticut.

[Stamped:] United States circuit court of appeals, second circuit. Filed Apr. 10, 1898. William Parkin, clerk.

1 *Writ of Error.*

UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the judges of the circuit court of the United States for the district of Connecticut, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between the First National Bank of Chicago and H. Drusilla Mitchell *et al.*, a manifest error hath happened, to the great damage of the said The First National Bank, as is in and appears by said complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the United States circuit court of appeals for the second circuit, together with this writ of error, so that you have the same at said place before the justices aforesaid on the 10th day of April next, that the record and proceedings aforesaid being inspected, the said justices of the court of appeals may cause further to be done therein to correct the error, what of right and according to the law and custom of the United States ought to be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 12th day of March, in the year of our Lord one thousand eight hundred and ninety-
2 eight, and of the Independence of the United States the one hundred and twenty-second.

[SEAL.] E. E. MARVIN,
Clerk of the Circuit Court of the United States for the District of Connecticut.

Allowed:
N. SHIPMAN,
Circuit Judge.

(Endorsed:) No. 435. U. S. circuit court. First National Bank of Chicago *vs.* H. Drusilla Mitchell *et al.* Writ of error. Filed March 12, 1898. E. E. Marvin, clerk.

FIRST NATIONAL BANK OF CHICAGO
versus
H. DRUSILLA MITCHELL ET AL.

Be it remembered that heretofore, to wit, on the 30th day of December, A. D. 1895, H. Drusilla Mitchell and G. H. Mitchell, her husband, both of Bristol, Hartford county, and State of Connecticut, were attached and summoned to appear before the circuit court of the United States of America for the district of Connecticut, to be held in the United States court-room in the city of New Haven, on the fourth Tuesday of April, A. D. 1896, then and there to answer unto the First National Bank of Chicago, a corporation duly organized under the laws of the United States, and located and doing business in the city of Chicago, State of Illinois, in a civil action, and herein the plaintiff complains and says:

3 1. The plaintiff is a corporation duly organized under the laws of the United States and having its principal place of business in the city of Chicago, in the State of Illinois, and is a citizen of said State.

2. The defendants are residents of the town of Bristol, in the State and district of Connecticut, and are citizens of said State.

3. On the 20th day of February, 1891, the defendant H. Drusilla Mitchell, at said Chicago, by an instrument in writing (a copy of which is hereto attached marked "Exhibit A" and made part of this paragraph), requested the plaintiff to extend credit from time to time to a copartnership, doing business at said Chicago under the name of Morse, Mitchell & Williams, and in consideration of such credit being given to said Morse, Mitchell & Williams by the plaintiff, the defendant the said H. Drusilla Mitchell guaranteed and promised to pay to the plaintiff all sums of money to the extent of thirty thousand dollars which should become due to the plaintiff from said Morse, Mitchell & Williams.

4. Relying upon said guarantee and promise and in consideration thereof the plaintiff extended credit and advanced money to said Morse, Mitchell & Williams from time to time within the time specified in said instrument to the amount of thirty thousand dollars.

5. Said Morse, Mitchell & Williams have not repaid said sums to the plaintiff and the same now are and long since have been due to the plaintiff from the defendant the said H. Drusilla Mitchell.

6. On or about the 1st day of December, 1893, the plaintiffs demanded payment of the amount of money due under said instrument from the defendant the said H. Drusilla Mitchell and the same was refused.

4 The plaintiff claims thirty thousand dollars damages.

And you are further commanded to have a true and attested copy of this writ and of the accompanying complaint at least twenty

days before the session of this court to which it is returnable, with J. H. Welch, of the town of Bristol, in said district and State of Connecticut, or at his usual place of abode, as he is the executor of the will of E. N. Welch, deceased, and as such executor is the agent, trustee and debtor of said defendant H. Drusilla Welch, and as such executor has concealed in his hands the goods or estate of the said H. Drusilla Mitchell or as such executor is indebted to her.

And thereafter, to wit, of the 20th day of April, A. D. 1896, the defendants entered their appearance by Messrs. C. E. Mitchell and T. M. Maltbie, and filed their plea in abatement as follows, viz:

Circuit Court of the United States, District of Connecticut, April 28, 1896.

FIRST NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA WELCH ET AL.

In abatement.

The defendant H. Drusilla Mitchell pleads in abatement, because at the time said contract is alleged to have been made and at the time of the commencement of this action she was a married woman, the wife of George H. Mitchell, since deceased, and was so married prior to April 27, 1877, viz., on the — day of ——, 1857, and has not entered into the contract authorized by section 2798, General Statutes of Connecticut.

And therefore she prays judgment.

By C. E. MITCHELL AND
T. M. MALTBIE,
Her Attorneys.

5 *Second Substitute Plea in Abatement.*

Circuit Court of the United States, District of Connecticut, May 22, 1897.

FIRST NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA MITCHELL ET AL.

In abatement.

The defendant H. Drusilla Mitchell pleads in abatement, because she signed said writing, Exhibit "A," at her domicile in Bristol, in the State of Connecticut, and was, at the time of signing the same, a married woman, the wife of said George H. Mitchell, to whom she was married in 1857, at said Bristol, where she has ever since resided.

And therefore she prays judgment.

H. DRUSILLA MITCHELL,
By T. M. MALTBIE, *Her Att'y.*

6 U. S. Circuit Court, District of Connecticut, May 26, 1897.

FIRST NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA MITCHELL.

Answer.

1. Paragraphs 1 and 2 of the complaint are admitted.
2. Paragraph 3 is denied. Said writing, Exhibit "A," was signed by the defendant at her domicile in Bristol, in the State of Connecticut, and was not otherwise made, executed or delivered by her.
3. The defendant, at the time she signed said writing, was a married woman, the wife of George H. Mitchell, of said Bristol, to whom she was married in 1857, at said Bristol, where she then resided, and ever since has resided.
4. Paragraphs 4 and 5 are denied. Said copartnership of Morse, Mitchell & Williams, at the time the said writing, Exhibit "A," was signed by the defendant, and prior thereto, was indebted to the plaintiff in a large sum, viz., $25,000 and more; and the plaintiff did not thereafter give said copartnership additional credit, but such indebtedness was largely reduced.

T. M. MALTBIE,
Att'y for Defendant.

7 *Stipulation.*

U. S. Circuit Court, District of Connecticut, May 26, 1897.

THE NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA MITCHELL.

We hereby stipulate and agree that the above-entitled case shall be withdrawn from the jury and be tried to the court.

CASE, BRYANT & CASE,
Att'ys for Plaintiff.
T. M. MALTBIE,
Att'y for Defendant.

And thereafter, on the 8th day of June, 1897, the facts in the case were agreed to by the parties and filed in court as follows, viz:

The Claims of the First National Bank of Chicago against Mrs. H. Drusilla Mitchell.

Statement of facts.

1. Said bank is organized under the laws of the *the* United States and engaged in the business of banking in Chicago, in the State of Illinois.
2. Said H. Drusilla Mitchell was born and has always resided in

Bristol, State of Connecticut. She was married there in 1857
8 to George H. Mitchell and with her said husband established a home at Forestville in said Bristol, where they resided until his death, which occurred March, 1896, and where she now resides.

3. Said George H. Mitchell was a member of the firm of Morse, Mitchell & Williams, a copartnership located at said Chicago, engaged in mercantile and real-estate business. The other members of said firm were Francis E. Morse and Frederick C. Williams, both of said Chicago.

4. Said Morse, Mitchell & Williams kept an account and did business with said First national bank, and on the 20th day of February, 1891, were largely indebted to said bank, viz., in the sum of twenty thousand dollars ($20,000) or more, as evidenced by their notes payable to said bank.

5. On said February 20, 1891, said firm and said Morse, Williams and George H. Mitchell executed to said bank at Chicago the paper, a copy of which is hereto annexed marked "A."

Said paper was prepared by said bank, which had agreed with said firm to continue the line of credits to it upon the execution of said paper by said firm and its individual members and by Mrs. H. Drusilla Mitchell, then at her home in said Bristol.

6. Said George H. Mitchell thereupon took said paper and brought it with him to his residence at said Forestville and there procured his said wife, H. Drusilla Mitchell, to sign the same, and the same was thereafter enclosed, addressed and sent by mail to said Morse, in Chicago, who delivered said paper to said bank.

7. Said bank continued to extend credit to said Morse, Mitchell & Williams until said firm became insolvent and made an assignment for the benefit of its creditors on July 30, 1893.

9 8. At the time of such insolvency and assignment said bank held and owned the notes of Morse, Mitchell & Williams, renewals of unpaid portions of said first-mentioned notes for the sum of sixteen thousand five hundred dollars ($16,500), copies of which renewal notes, marked respectively "1," "2," "3," "4," "5," are hereto attached. Also note made by Elizabeth Ewing two hundred eighty-nine dollars and sixty cents ($289.60), endorsed by Morse, Mitchell & Williams, copy attached marked "6."

9. Said bank also held and owned notes made by F. E. Morse & Son, another business firm in Chicago, said F. E. Morse being the above-named Francis E. Morse, for the sum of eighty-five hundred dollars ($8,500), which notes were endorsed by said Morse, Mitchell & Williams, and discounted for the benefit of said Morse & Son by said bank. Copies of said notes marked "7" and "8" are hereto attached. Said F. E. Morse & Son became insolvent, and made an assignment for the benefit of their creditors, and said notes were presented as a claim against the estate of F. E. Morse & Son, and on May 27, 1895, said bank was paid seventeen hundred nineteen dollars and sixty-four cents ($1,719.64) as a dividend upon said notes.

Notice of non-payment of said notes was not given to said en-

dorsers, except the constructive notice arising from the foregoing facts.

10. Said bank December 26, 1893, prepared the letter addressed to J. H. Welch, Esq., executor of the will of E. N. Welch, deceased, a copy of which is hereto annexed marked "B," which letter was sent to said George H. Mitchell, at Forestville, Conn., by said bank to procure the signature of his wife, said H. Drusilla Mitchell, thereto. With reference to said letter, said George H. Mitchell addressed said bank letters dated December 30, 1893, January 8, 1894, and January 23, 1894, in the last of which letters he enclosed said letter addressed to J. H. Welch. He also received from Orville Peckham, attorney of said bank, a letter dated January 10, 1894. Copies of said letters are hereto attached marked "C," "D," "E," "F." Said letters were duly mailed and received by the parties to whom addressed. Upon the receipt of said letters by said bank, said bank executed and transmitted to George H. Mitchell by mail the receipt, copy of which is attached marked "G," but the same was never delivered by said George H. Mitchell to said H. Drusilla Mitchell, or its existence made known to her until after his death.

11. The printed statutes and the decisions of courts of last resort of the State of Illinois are referred — and made part hereof, as showing the existing law of said State at the time of said several transactions.

12. The original notes, papers and letters in said bank or its attorneys' —, copies of which are hereto attached, shall be produced for examination and use in the trial and argument when said claim is heard.

13. It is expressly stipulated by the parties hereto that this agreed statement of facts may be used upon the hearing as to the allowance of this claim by the commissioners on the insolvent estate of H. Drusilla Mitchell, and in case of appeal by either party from the allowance or disallowance of said claim upon the hearing of such appeal in the superior court for Hartford county or any other court which may hear the same. Also that the statement of facts may be used by either party in the treatment of the case now pending in the United States circuit court for the district of Connecticut.

Dated at Hartford this June 9, 1896.

CASE, BRYANT & CASE,
Attorneys for the First National Bank of Chicago.
T. M. MALTBIE,
Att'y for H. Drusilla Mitchell, E. A. F. Irllman, Trustee, &c.

Ex. "A."

We hereby request the First National Bank of Chicago to give & continue to Morse, Mitchell & Williams credit as they may desire from time to time, and in consideration of all and any such credit given we hereby guarantee any and all indebtedness now due or which may *be* hereafter become due from them to said bank to the extent of thirty thousand dollars and waive notice of the acceptance

of the guaranty and of any and all indebtedness at any time covered by the same.

This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by the said First National Bank of Chicago.

MORSE, MITCHELL & WILLIAMS.
FRANCIS E. MORSE.
FREDERICK C. WILLIAMS.
G. H. MITCHELL.
H. DRUSILLA MITCHELL.

Chicago, Ills., Feb. 20, 1891.

Ex. "1."

$3,000.00. CHICAGO, *April 12th*, 1893.

Four months after date we promise to pay to the order of the First national bank three thousand dollars at 34 & 36 Washington St. Value received.

MORSE, MITCHELL & WILLIAMS.

12 Ex. "2."

$5,000.00. CHICAGO, *April 17th*, 1893.

Four months after date we promise to pay to the order of the First national bank five thousand dollars at 34 & 36 Washington St. Value received.

MORSE, MITCHELL & WILLIAMS.

Ex. "3."

No. 87773. $5,000. CHICAGO, ILLS., *May* 16, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago, five thousand dollars with interest at seven per cent. per annum, after due at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

Payable at 34 & 36 Washington St., Venetian bldg.

Ex. "4."

$2,500.00. CHICAGO, *June* 10, 1893.

Four months after date we promise to pay to the order of First national bank, twenty-five hundred dollars, at 24 Washington St. Value received.

MORSE, MITCHELL & WILLIAMS.

Indorsed: F. E. Morse & Son.

Ex. "5."

No. 92099.
$1,000.00. CHICAGO, ILLS., *June* 30, 1893.

Ninety days after date we promise to pay to the order of the First National Bank of Chicago one thousand dollars with interest at seven per cent. after due at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

13 Ex. "6."

$289.60. CHICAGO, *June* 8, 1893.

Three months after date I promise to pay to the order of Morse, Mitchell & Williams two hundred eighty-nine $\frac{60}{100}$ dollars at 34 Washington St. Value received. 7% from date.

ELIZABETH EWING.

Endorsed.

Paid 10/3/93 ..... $50 00
" 10/31/93 ..... 10 00
" 12/5/93 ..... 5 00
" 5/5/94 ..... 10 00
" 8/8/95 .....

MORSE, MITCHELL & WILLIAMS.

Ex. "7."

$5,000.00. CHICAGO, *April 1st*, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago five thousand dollars at 100 State St., Chicago, Ill. Value received.

F. E. MORSE & SON.

Indorsed: Paid 5/27/95. $1,719.64. Paid by assignee. Morse, Mitchell & Williams.

Ex. "8."

$3,500. CHICAGO, *June* 10, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago thirty-five hundred dollars at the First national bank. Value received.

F. E. MORSE & SON.

Indorsed: Morse, Mitchell & Williams.

14 Ex. "B."

CHICAGO, ILLS., *December* 28, 1893.

J. H. Welch, Esq., executor of the will of E. N. Welch, deceased, Forestville, Conn.

DEAR SIR: I desire to notify you that I have assigned, set over & transferred to the First National Bank of Chicago, Illinois, all

my right, title & interest in & to so much of the estate of my late father E. N. Welch, deceased, as has not been distributed & you will therefore account for & pay over to the said First National Bank of Chicago, instead of to me, all money and other property coming to me or to which I may be entitled at any time hereafter from said estate of my deceased father. Please note at the foot hereof, for the satisfaction & security of said bank, that you will undertake to do this, & in case you should cease to be the executor of the estate otherwise than by death you would promptly give notice of the fact to said bank in order that it might give express notice of this assignment to your successor in the trust.

Yours truly, H. DRUSILLA MITCHELL.

I take notice of the foregoing & will comply therewith.

J. H. WELCH, *Ex'r.*

15 Ex. "C."

FORESTVILLE, CONN., *Dec.* 30, 1893.

I arrived home yesterday & at this writing is inclined to sign the papers which I brought with me. She wishes to consider the matter over Sunday but I think there is no doubt that I will be able to send it to you the first of the week.

Yours very truly,

(Signed) G. H. MITCHELL.

Ex. "D."

FORESTVILLE, CONN., *Jan.* 8, 1894.

First national bank, Chicago, Ills.

GENTLEMEN: I have to make one more apology. I was called to New York on important business connected with our clock company last week & only returned Saturday, consequently I was unable to attend to our matters & it was only today that I succeeded in getting the signatures as Mr. Welch has also been away. I now enclose the paper just as you lawyers wrote it, except that I have, by advice of my counsel, added the conditions which I presume will be satisfactory to you.

Will you kindly own receipt of same & also send me a statement of the notes up to Jan. 1st and oblige

Yours very truly,

(Signed) G. H. MITCHELL.

16 Ex. "E."

CHICAGO, ILLS., *Jan.* 10, 1894.

Geo. H. Mitchell, Esq., Forestville, Conn.

DEAR SIR: Your favor of the 8th inst. to First national bank has been referred to me. The additions made by Mrs. Mitchell to the terms of the assignment of her interest in her father's estate are not satisfactory and are not in accordance with the arrangements made between you & the bank when you were here. You will, I think,

remember that the arrangement was that the assignment should be on its face unconditional, but that I should prepare & the bank should give Mrs. Mitchell a paper setting forth the terms on which the assignment was received & was to be held. I have drawn such a paper & enclose it & the paper signed by Mrs. Mitchell herewith. Please substitute for the latter a new instrument, leaving out the last two paragraphs of the present one & send it to me, keeping for Mrs. Mitchell the bank's receipt, etc.

Your counsel will probably see no objection to the form in which I have preferred to provide the protection which Mrs. Mitchell is entitled to & will find it sufficient besides being what was agreed to with you. It is the form in which we always put such matters, & they are very frequent matters with us. You will note that Mrs. Mitchell is given the time to Jan. 1st, 1895, which you stipulated for while here. The bank understands from you that the remaining estate of Mr. E. N. Welch is not distributable under the will (or at least that a large part of it is not), for some two or three years yet. The executor will understand of course, that we shall & can demand under the assignment only what Mrs. Mitchell herself could demand.

Yours very truly,
(Signed) ORVILLE PECKHAM.

17 Ex. "F."

FORESTVILLE, CONN., *Jan.* 23, 1894.

First national bank, Chicago, Ills.

GENTLEMEN: Once more I have got the parties together, & herewith enclose the document as originally made by you & which I trust will now be satisfactory. Apologizing for keeping you waiting, I remain,

Yours very truly, G. H. MITCHELL.

Ex. "G."

DECEMBER 26, 1893.

Received of H. Drusilla Mitchell an assignment of all her right, title & interest in the undistributed estate of her late father E. N. Welch, deceased, the same being so received in pledge to secure the payment of her indebtedness to the undersigned, its successors or assigns, upon her guaranty of certain notes made or endorsed by Morse, Mitchell & Williams, of Chicago, amounting to $26,000, more or less.

In consideration of security pledges as aforesaid, the undersigned undertakes & promises to surrender & reassign the same or so much thereof as shall not have been applied on said indebtedness at any time after payment in full of the indebtedness aforesaid & not to enforce or demand payment of said indebtedness from said H. Drusilla Mitchell, her heirs, executors or administrators, prior to Jan. 1st, 1895, except from the interest or property assigned as security aforesaid.

THE FIRST NATIONAL BANK
OF CHICAGO,
By L. T. GAGE, *Pr.*

18 United States Circuit Court, District of Connecticut.

FIRST NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA MITCHELL.

TOWNSEND, *District Judge:*

Action on a guaranty heard upon complaint and answer and an agreed statement of facts.

The defendant is a resident of Connecticut and a married woman, having been married in 1857, and having resided continuously at Bristol, Connecticut, since that time.

Defendant's husband, G. H. Mitchell, was a member of a copartnership, Morse, Mitchell & Williams, doing business at Chicago.

At the request of her husband she signed a guaranty, which was taken by him to Chicago and there delivered to the plaintiff. The guaranty was dated at Chicago, and had been signed by the members of the firm there before it was signed by the defendant.

Plaintiff claims that, although defendant did not personally leave the State of Connecticut, yet, as the written contract was dated at Chicago and was delivered by her husband at Chicago, and was to be performed there, defendant must be taken to have made the contract at Chicago, and as in Illinois a married woman is allowed to contract for all purposes, defendant could so contract in Illinois, and is bound by the guaranty.

19 After the suit was brought defendant made an assignment in insolvency. The plaintiff presented the claim herein involved to the commissioners on her estate, and it was allowed by them, and the case was taken by her trustee in insolvency by appeal to the superior court, and upon reservation to the supreme court of errors of Connecticut, where precisely the same facts were presented and passed upon.

The court there held that defendant, being a married woman, had no capacity to make any such contract; that to sign the guaranty in Connecticut and authorize her husband as her agent to deliver the guaranty at Chicago was to enter into a contractural relation in Connecticut which she had no capacity to do; that, therefore, she could not while in Connecticut authorize her husband to take the guaranty to Chicago and deliver it, and that, therefore, it was never delivered by her.

Before considering the legal propositions involved in this decision, the question arises whether this court will enforce against a married woman who has always resided in Connecticut a contract made by her in writing sent to another State, she not personally leaving the State of Connecticut, which the highest court of Connecticut has pronounced invalid and unenforceable in that State.

In Milliken *vs.* Pratt, 125 Mass., 375, the facts were practically identical; the guaranty in that case having been taken by the husband to the State of Maine. The court held that the contract was made in Maine and valid in Massachusetts, saying: "If the contract

is completed in any State it makes no difference in principles whether the citizen of this State goes in person or sends an agent or writes a letter across the boundary line between the two States."

In finally deciding the question, however, the court lay stress upon the fact that at the time of the trial of the case the wife could have legally made the contract in Massachusetts, saying: "The question, therefore, is whether a contract made in another
20 State, which a married woman was not at the time capable of making under the law of this Commonwealth, but was then allowed by the law of that State to make and which she could now legally make in this Commonwealth, will sustain a case against her in our courts."

And Milliken *vs.* Pratt also seems to hold that the guaranty made in Maine, as above stated, would not be enforceable in Massachusetts if Massachusetts had not consented to such enforcement, saying: "As the law of another State cannot operate or be executed in this State by its own force, but only by the comity of this State, its approbation and enforcement here may be restricted by possible prohibition of statute. A State may always, by express enactment, protect itself from being obliged to enforce in its courts contracts made abroad by its citizens which are not authorized by its own laws. It is possible, also, that in a State where the common law prevails in full force, by which a married woman was deemed incapable of binding herself by any contract whatever it may be inferred that such an utter incapability lasting throughout the joint lives of husband and wife must be construed as so fixed by the settled policy of the State for the protection of its own citizens that it could not be held by the courts of that State to yield to the laws of another State in which she might undertake to contract."

In Bell *vs.* Packard, 69 Maine, 105, a married woman sent a contract to Maine, where she could have legally made it, and the supreme court of Maine held that the contract was made in Maine and was valid and enforceable there.

In Bowles *v.* Field, 78 Fed., 742, a married woman residing in Indiana, while transiently in Ohio, gave notes as surety for her husband. The laws of Indiana allowed a married woman to contract for all purposes, except as specially provided, and among the exceptions was a contract for suretyship. The court held,
21 that having a general power to contract this particular limitation could have no extraterritorial force. The court said: "It is not charged that she went to Ohio and executed the notes as surety for her husband for the purpose of evading the law of domicil." This seems to be an intimation that if she had not had a general power to contract and had remained in Indiana, the contract would not have been enforceable.

The common law which makes the contract of a married woman invalid may still be accepted as the general rule for the States which have not made exceptions by statute. The three cases cited above, holding the contract of a married woman valid, are in States where a woman has this general power to contract, and it is implied in two of these decisions that the State of her domicil would have had the

power to protect a married woman from the result of her contract made while personally present in such State if it had chosen to do so. It may be admitted, as stated by Judge Story in his Conflict of Laws, sec. 103, in regard to incapacity incident to coverture, "The law of the place where the contract is made or the act is done now governs." And that as stated in Scudder *vs.* Bank, 91 U. S., 406: "The validity of a contract is to be determined by the law of the place where it is made." Yet I do not think this principle has been carried so far in any decided case as a judgment for the plaintiff in this case would require.

The capacity of citizens of a State so long as they actually remain within the borders of the State would seem to be a matter of local law to be controlled by the laws of the State and not to be evaded by the simple device of sending or mailing a letter to some other State. Suppose that the laws of State should provide that infants might attain their majority and become capable of contracting at the age of eighteen years, could it be held that a minor, eighteen years old, in Connecticut, could by mailing a contract to that State subject his property in Connecticut to execution against the
22 will of her guardian and against the determination of the legislature and courts of Connecticut.

"It may be said generally wherever the decisions of the State courts related to some law of a local character which may have become established by those courts or has always been a part of the law of the State that the decisions upon the subject are usually conclusive and always entitled to the highest respect of the Federal court." Where such local law *on* custom has been established by repeated decisions of the highest courts of the State, it becomes also the law governing courts of the United States sitting in that State" (Bacher *vs.* Cheshire R. R. Co., 125 U. S., 555; Burgess *vs.* Seligmann, 107 U. S., 20).

In the present case the law by which the invalidity of a contract is established is the common law, and the decisions that a married woman has capacity to make such contracts are founded upon local statutes.

In these circumstances, I think, it is the duty of this court to follow the decision of the Connecticut court of last resort. Let judgment be entered for defendant.

Case, Bryant & Case, for plaintiffs.

Hungerford & Maltbie, for defendants.

And at the same term of court, to wit, on the 7th day of March, the plaintiff, by its attorneys, duly appeared, and the defendant, by her attorneys, also duly appeared and demanded judgment in accordance with the decision of court, whereupon it is considered and adjudged by the court that the issue is for the defendant, and that the defendant do recover of the plaintiff *its* costs.

23 The United States Circuit Court of Appeals, October Term, 1897.

THE FIRST NATIONAL BANK OF CHICAGO
versus
H. DRUSILLA MITCHELL ET AL.

Assignment of Errors.

Afterwards, to wit, on the 12th day of March, 1898, comes The First National Bank of Chicago, plaintiff in error, by *their* attorneys, Case, Bryant & Case, and say that the order and judgment in said cause is erroneous and against the just rights of the plaintiff in error and for the following reasons:

First. Because the court, though requested, did not hold that the guaranty, upon which this suit was brought, was executed by the said H. Drusilla Mitchell, in the city of Chicago, where the same would be a valid contract.

Second. Because the court, though requested, did not hold that said guaranty was made and delivered in Chicago, in the State of Illinois, and governed by the laws of the State of Illinois.

Third. Because the court, though requested, did not hold that said guaranty was an Illinois contract and governed by the laws of Illinois and enforceable by comity in this jurisdiction.

24 Fourth. Because the court, though requested, did not hold that the delivery of said contract in Chicago by said Francis E. Morse was a delivery in Chicago by said H. Drusilla Mitchell.

Fifth. Because the court refused to hold that H. Drusilla Mitchell could, by sending said guaranty by mail to Chicago for delivery, thereby make the same a valid contract under the laws of Illinois, when the same was properly delivered and accepted and enforcible in this jurisdiction.

Sixth. Because the court, though requested, did not hold that a contract in writing made by a married woman to be performed in Illinois and enforced in Illinois by the laws was enforcible in Connecticut.

Seventh. Because the court, though requested, did not hold that said contract was a good and valid contract, and enforcible in the State of Connecticut.

Eighth. Because the court did not render judgment in favor of the plaintiff in error instead of in favor of the defendant in error.

PLAINTIFF IN ERROR,
By CASE, BRYANT & CASE,
Its Attorneys.

25 Circuit Court of the United States for the District of Connecticut.

THE FIRST NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA MITCHELL ET AL.

Petition for Writ of Error.

The First National Bank of Chicago, by its attorneys, Case, Bryant & Case, considering itself aggrieved by the order and judgment entered on the 7th day of March, 1898, in the above-entitled cause, does hereby petition for a writ of error from said order *of* judgment to the United States circuit court of appeals for the second circuit, for the reasons specified in the assignment of error, which is filed herewith, and it prays that such writ of error may be allowed, and that a transcript of the record, proceedings and papers upon which said order and judgment were made, duly authenticated, may be sent to the United States circuit court of appeals for the second circuit.

Dated March 12, 1898.

CASE, BRYANT & CASE,
Attorneys for the Plaintiff.

The foregoing petition for a writ of error is allowed.

Dated March 12, 1898.

N. SHIPMAN,
Circuit Judge.

26 United States Circuit Court of Appeals, October Term, 1897.

THE FIRST NATIONAL BANK OF CHICAGO, Plaintiff in Error,
versus
H. DRUSILLA MITCHELL ET AL, Defendant- in Error.

Know all men by these presents that we, the First National Bank of Chicago, Cook county, State of Illinois, as principal, and Percy S. Bryant, of East Hartford, Hartford county, Connecticut, as surety, are held and firmly bound unto H. Drusilla Mitchell *et al.*, the above-named defendants in error, in the sum of two hundred and fifty dollars to be paid to the said H. Drusilla Mitchell *et al.*, their executors, administrators and assigns, to *the* which payment well and truly to be made we bind ourselves and each of us jointly and severally and our successors and our heirs, executors, administrators and assigns firmly by these presents.

Dated this 12th day of March, 1898.

Whereas, the above-named The First National Bank of Chicago has petitioned for a writ of error to the United States circuit court of appeals for the second circuit to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the district of Connecticut:

Now, therefore, the condition of this obligation is such that if the above-named The First National Bank of Chicago shall
27 prosecute its said writ of error to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and virtue.

THE FIRST NATIONAL BANK [L. S.]
OF CHICAGO,
By CASE, BRYANT & CASE, *Att'ys.*
PERCY S. BRYANT. [L. S.]

Approved March 12, 1898.

N. SHIPMAN,
Circuit Judge.

UNITED STATES OF AMERICA, *ss:*

To H. Drusilla Mitchell *et al.*, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the second circuit, in the city of New York, in the State of New York, on the 9th day of April, A. D. 1898, pursuant to a writ of error granted and filed in the clerk's office of the circuit court of the United States for the district of Connecticut, wherein The First National Bank of Chicago is plaintiff in error, and you are the defendant- in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and reversed, and speedy justice should be done to the parties in that behalf.

Dated at Hartford, March 12, 1898.

N. SHIPMAN,
Circuit Judge.

Service of the above and foregoing citation is hereby accepted.
Dated this 12th day of March, 1898.

DEFENDANT IN ERROR
By T. M. MALTBIE, *Att'y.*

28 CLERK'S OFFICE, U. S. CIRCUIT COURT,
DISTRICT OF CONNECTICUT,
HARTFORD, *March* 22, 1898.

I, E. E. Marvin, clerk of the circuit court of the United States for the district of Connecticut, do certify that the foregoing is a true copy of the record and proceedings and all things concerning the same of record and on file in said court in a certain action at law therein entitled The First National Bank of Chicago *versus* H. Drusilla Mitchell *et al.*

In testimony whereof, I have set hereto my hand and the seal of said court the day and place first above written.

[SEAL.] E. E. MARVIN, *Clerk.*

29 United States Circuit Court of Appeals for the Second Circuit, October Term, 1898.

Submitted December 13, 1898; decided March 1, 1899.

THE FIRST NATIONAL BANK OF CHICAGO, Plaintiff in Error,
vs.
H. DRUSILLA MITCHELL ET AL., Defendants in Error. } No. 35.

In error to the circuit court of the United States for the district of Connecticut. Before Judges Wallace, Lacombe, and Shipman.

WALLACE, *Circuit Judge:*

This action was tried in the court below without the intervention of a jury, and upon the facts set forth in the stipulation of the parties, and found by the court, there should have been a judgment for the plaintiff for the sum indemnified by the guaranty signed by the defendant, H Drusilla Mitchell, if she, being a married woman, was competent to make the contract. In deciding adversely to the plaintiff the court below followed the decision of the supreme court of Connecticut in Freeman's Appeal (68 Conn., 533), upon the same facts, in a suit brought by the plaintiff subsequent to the present action to establish the guaranty as a demand against the estate of the defendant in insolvency.

The question in the case is whether a guaranty payable in the State of Illinois and delivered to the plaintiff there, signed by a married woman at her domicile in Connecticut to enable her
30 husband to procure credit with the plaintiff, delivered by her to her husband, and sent by him by mail to the plaintiff, is a valid contract, she being disqualified by the law of Connecticut from making a contract as surety, and authorized to do so by the laws of Illinois. In other words, the question is whether the incapacity to contract by the law of the State of a person's domicile attaches to his contractual act in another State where the disability has been removed. This question has been much considered by commentators upon private international law, and has encountered the divergence of opinion which so frequently characterizes their essays. We shall not undertake to rehearse their views or summarize their conclusions, or to discuss the question upon principle. It has been considered and decided in respect to the incapacity of coverture and minority several times by the courts of this country, and uniformly with the same result, except in Freeman's Appeal. The previous authorities are collated in Milliken *vs.* Pratt (125 Mass., 374), and the opinion delivered is such a complete exposition of them, that other references are unnecessary. The judgment determines the precise question presented in this case. In that case the plaintiffs sued in Massachusetts a married woman, domiciled there, who had signed a guaranty for her husband intended to be used by him to obtain credit with the plaintiffs at Portland, Maine. She delivered it to her husband at their home in Massachusetts, and he mailed it there to the plaintiffs at Portland, and the plain-

tiffs received it at Portland shortly after. By the law of Massachusetts at the time a married woman was incapacitated to make such a contract; by the law of Maine she was not. The court decided that the contract was made in Maine and controlled by the law of that State; that as regarded the capacity of the defendant, its validity depended upon the law of that State; and that as the law of Maine authorized a married woman to bind herself by such a contract, it was a valid contract, and the plaintiffs were entitled to recover.

A case exactly coincident in its facts with the present case, and with Milliken *vs.* Pratt, is Bell *vs.* Packard (69 Me., 105),
31 except that instead of signing a guaranty the defendant in that case signed a note as surety for her husband. The court decided that the note was a Maine contract, and obligatory upon the defendant.

These adjudications proceed upon the considerations that the instrument was not effective for any purpose until delivered to the party for whose benefit it was prepared; that the place where it became operative was the place where the contract was made; and that the disqualification of the married woman in the State of her domicile did not accompany her in making a contract in a State where the disqualification had been removed. They are a consistent and logical application of that fundamental and most important rule of private international law that a contract valid by the law of the place where it is made is valid everywhere.

In Bowles *vs.* Field (78 Fed. Rep., 742) a married woman domiciled in Indiana went to Ohio and there executed notes as surety for her husband, she being incapacitated from making such contracts by the law of her domicile but not by the law of Ohio. The court held the contracts valid, affirming the general proposition that the contract of a married woman, valid by the law of the place where it is made, is valid and binding upon her, notwithstanding by the law of her domicile she is incapacitated from making such a contract.

These judgments meet our approval, and upon their authority we are of the opinion that the court below should have adjudged in favor of the plaintiff.

In Freeman's Appeal the court conceded that the guaranty was a contract made in Illinois. It based the decision upon the ground that the defendant could not constitute her husband her agent in Connecticut to deliver the instrument. The court used this language: "Had Mrs. Mitchell been within the State of Illinois, when she signed the guaranty, it may be that her personal presence would have so far made her a resident of that State as to subject her to
its laws, in respect to acts done within its jurisdiction. But
32 as whatever was done in Illinois to bind her to the bank was done under an agency constituted in Connecticut, it is the law of Connecticut which must determine as to the authority of the agent, and so as to the validity of the obligation which he as such undertook to impose upon her by delivery in Chicago of the paper signed by her in Bristol." Inasmuch as the only "agency consti-

tuted in Connecticut," or the only necessary agency, was the entrusting her husband with a letter for deposit in the mail, we think the reasoning of the learned court to be ingenious rather than convincing. The interposition of such an agency was not regarded of sufficient importance to require comment in Milliken *vs.* Pratt or Bell *vs.* Packard.

It is to be observed that the State court did not consider the contract one which ought not to be enforced because violative of the policy of the State. Indeed, by the statute of 1877 (General Statutes of Conn., section 2796) as to women subsequently married the disability to make such a contract no longer exists.

We are extremely reluctant to differ with the supreme court of Connecticut in a case involving the same facts between substantially the same parties, not only because the opinion of that learned tribunal is always entitled to great consideration but also because it is in a sense unseemly that there should be diverse judgments under such circumstances between a Federal court sitting in that State and the highest court of the State. But the case is one which concerns the rights of a citizen of Illinois acquired before the decision of the State court, and its decision depends not upon the construction of local laws but upon the application of the principles of general jurisprudence. In such cases the Federal courts are in duty bound to exercise their own independent judgment.

In view of the decision of the supreme court of Connecticut we should be glad to certify the question which we have thus considered to the Supreme Court for instructions, but we do not feel authorized to do so, especially as that tribunal, under the power to issue a certiorari, can review our judgment if it sees fit.

33 The judgment is reversed, with instructions to the court below to render a judgment for the plaintiff for the amount due by the terms of the guaranty.

Lacombe, C. J., dissents.

Wm. C. Case and Percy S. Bryant, for the plaintiff in error.

Theodore Maltbie and Frank L. Hungerford, for the defendants in error.

34 At a stated term of the United States circuit court of appeals in and for the second circuit held at the court-rooms, in the post-office building, in the city of New York, on the 18th day of April, one thousand eight hundred and ninety-nine.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, circuit judges.

FIRST NATIONAL BANK OF CHICAGO, Plaintiff in Error,
vs.
H. DRUSILLA MITCHELL, Defendant in Error.

Error to the circuit court of the United States for the district of Connecticut.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the district of Connecticut and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the judgment of said circuit court be, and it hereby is, reversed with costs and with instructions to the court below to render a judgment for the plaintiff for the amount due by the terms of the guaranty.

W. J. W., N. S. It is further ordered that a mandate issue to the said circuit court in accordance with this decree.

[Endorsed:] United States circuit court of appeals, second circuit. 1st. Nat. Bank *vs.* Mitchell. Order for mandate.

35 UNITED STATES OF AMERICA, *Southern District of New York*, } ss:

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 34, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of First National Bank of Chicago, plaintiff in error, against H. Drusilla Mitchell, defendant in error, as the same remain of record and on file in my office.

Seal United States Circuit Court of Appeals, Second Circuit.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 19th day of April, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the said United States the one hundred and twenty-third.

WM. PARKIN, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled 4, 19, '99. W. P.]

36 In the Supreme Court of the United States.

FIRST NATIONAL BANK OF CHICAGO, Plaintiff in Error,
vs.
H. DRUSILLA MITCHELL, Defendant in Error. } No. —.

Stipulation as to Use of Records of the Superior Court and Supreme Court of Errors of Connecticut on File.

In the above-entitled case, removed to the Supreme Court from the circuit court of appeals of the United States for the second cir-

cuit by writ of certiorari, it is hereby stipulated and agreed by the counsel for the parties thereto that the exemplified copies of the record in the superior court and supreme court of errors of the State of Connecticut in the case of Freeman's appeal from doings of commissioners on the estate of H. Drusilla Mitchell, filed with the petition of the defendant in error for said writ, shall, upon the argument of said case in the Supreme Court, be taken and treated as if duly filed as a part of the record of said case in said court.

Dated at Hartford this 22nd day of May, A. D. 1899.

WM. C. CASE,
Counsel for Plaintiff in Error.
THEODORE M. MALTBIE,
Counsel for Defendant in Error.

37 [Endorsed:] File No., 17,390. Supreme Court U. S., October term, 1898. Term No., 280. The 1st National Bank of Chicago, pl'ff in err., *vs.* H. Drusilla Mitchell *et al.* Stipulation as to use of records of the superior court & supreme court of errors of Connecticut. Filed M[illegible] 27, 1899.

38 To all persons to whom these presents shall come, Greeting:

Know ye that I, George A. Conant, clerk of the county of Hartford and of the superior court of the State of Connecticut within and for said county, having inspected the files and records in said superior court in my custody, do find there remaining on file a certain record in a cause known and entitled as "Edward A. Freeman, trustee, appeal from the doings of commissioners on estate of H. Drusilla Mitchell, insolvent debtor," in the words and figures following, to wit:

[Seal Superior Court, Hartford County, Ct.]

GEORGE A. CONANT, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled Mar. 16, 1899. G. A. C.]

39 STATE OF CONNECTICUT, } *ss.*:
Hartford County, }

At a court of probate holden at Bristol, within and for the district of Bristol, on the 30th day of September, A. D. 1896:

Present: Elbert E. Thorpe, Esq., judge.

Estate of H. DRUSILLA MITCHELL, Insolvent Debtor.

Edward A. Freeman of Plainville, in said county, as trustee of the estate of H. Drusilla Mitchell aforesaid, appears in court within one month next after the report of the commissioners on said estate is returned into said court of probate, and accepted and moves for an appeal to the superior court at Hartford, within and for the county of Hartford, on the first Tuesday of October, 1896, from the doings of said commissioners, in allowing a claim in favor of First National Bank of Chicago, State of Illinois, and finding the same

fully secured, which said claim exceeds the sum of seventy dollars, viz., $28,070 30.

Said motion for an appeal is allowed and granted by this court.

And the said Edward A. Freeman, as principal, and Adrian J. Muzzy, of Bristol, Conn., as surety, acknowledge themselves jointly and severally to be indebted and bound to the State of Connecticut in the sum of one hundred dollars, conditioned that said
40 appellant shall prosecute said appeal to effect and answer all damages in case he make not his plea good.

And it is ordered by this court that notice of said appeal and of this order be given to said First national bank by leaving a true and attested copy of said appeal and order with the attorneys and representatives in this State, of said bank, or by mailing a like copy, postage paid, addressed to said First national bank at Chicago, Ill., by the sheriff of the county of Hartford, his deputy, or by either of the constables of the town of Bristol, or by any indifferent person, at least five days before above return day of said superior court. And return make to said court.

Certified from record.

ELBERT E. THORPE, *Judge.*

HARTFORD, *September* 30, 1896.

Service of the foregoing appeal from commissioners is hereby accepted and further service of the same is waived, and it is agreed that the same may be entered upon the docket of the superior court and proceeded with in the same manner as if the order of notice herein had been complied with.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE, *Attorneys.*

Superior Court, Hartford County, November 10, 1896.

EDWARD A. FREEMAN, Trustee.

Appeal from doings of commissioners on estate of H. Drusilla Mitchell.

Statement of Claim.

1. The said H. Drusilla Mitchell, on the 20th day of February, 1891, executed and delivered to said First national bank at Chicago an instrument in writing of which a copy is hereto attached marked Exhibit "A."

41 2. Thereafter, and relying upon said instrument, said bank extended credit to said Morse, Mitchell & Williams to the extent of $30,000, as evidenced by sundry notes, copies of which are hereto attached marked respectively Exhibits "1," "2," "3," "4," "5," "6," "7," "8."

3. Said notes remain unpaid and are the property of said bank.

4. The amount of appellee's claim is $28,070.30, with interest thereon from the 17th day of June, 1896.

5. On June 17, 1896, and before the expiration of the time limited for the presentation of claims against said estate, the said claim was presented to said commissioners.

6. Said claim is secured by an assignment to said bank, from said Mitchell, of her interest in the estate of Elisha N. Welch, deceased.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE, *Its Attorneys.*

HARTFORD, CONN., *June* 17, 1896.

Estate of H. Drusilla Mitchell, E. A. Freeman, trustee, to the First National Bank of Chicago, Dr.

To amount of sundry notes guaranteed by H. Drusilla Mitchell (copies hereto attached)	$25,289.60
To interest on said notes from maturity of each to date.	4,738.34
	$30,027.94
Credit by sundry payments and interest thereon to date.	1,957.64
	$28,070.30

42 EXHIBIT 7.

$5,000.00. CHICAGO, *April 1st*, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago five thousand dollars at 100 State street, Chicago, Ills., value received.

F. E. MORSE & CO.

Indorsements: Paid 5/29/95. $1,719.64. Paid by assignee. Morse, Mitchell & Williams.

EXHIBIT 1.

$3,000.00. CHICAGO, *April 12th*, 1893.

Four months after date we promise to pay to the order of the First national bank three thousand dollars at 34 & 36 Washington St., value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT 2.

$5,000.00. CHICAGO, *April 17th*, 1893.

Four months after date we promise to pay to the order of the First national bank five thousand dollars at 34 and 36 Washington St., value received.

MORSE, MITCHELL & WILLIAMS.

43 EXHIBIT 3.

No. 87773. $5,000.00. CHICAGO, ILLS., *May 16th*, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago five thousand dollars, with interest, at

seven per cent. per annum, after due, at the office of said bank, value received.

MORSE, MITCHELL & WILLIAMS.

Payable at 34 and 36 Washington St., Venetian bldg.

EXHIBIT 4.

$2,500. CHICAGO, *June* 10, 1893.

Four months after date we promise to pay to the order of First national bank twenty-five hundred dollars at 34 Washington St., value received.

MORSE, MITCHELL & WILLIAMS.

Indorsed: F. E. Morse & Son.

EXHIBIT 6.

$289.60. CHICAGO, *June* 8, 1893.

Three months after date I promise to pay to the order of Morse, Mitchell & Williams two hundred eighty-nine $\frac{60}{100}$ dollars at 34 Washington St., value received, 7 per cent. from date.

ELIZABETH EWING.

Indorsements.

Paid 10/5/93	$50
" 10/31/93	10 00
" 12/5/93	5
" 5/5/94	10 00
" 8/8/95	50

MORSE, MITCHELL & WILLIAMS.

44 EXHIBIT 8.

$3,500. CHICAGO, *June 10th*, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago thirty-five hundred dollars at the First national bank, value received.

F. E. MORSE & SON.

Indorsed: Morse, Mitchell & Williams.

EXHIBIT 5.

CHICAGO, ILLS., *June 30th*, 1893.

Ninety days after date we promise to pay to the order of the First National Bank of Chicago one thousand dollars, with interest, at seven per cent. per annum, after due, at the office of said bank, value received.

MORSE, MITCHELL & WILLIAMS.

45 EXHIBIT "A."

We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they may desire from time to time, and in consideration of any and all such credit given, we hereby guarantee any and all indebtedness now due, or which may hereafter become due, from them to said bank, to the extent of thirty thousand dollars, and waive notice of the acceptance of this guaranty and of any and all indebtedness at any time covered by the same. This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by said The First National Bank of Chicago.

Chicago, Ill., February 20, 1891.

MORSE, MITCHELL & WILLIAMS.
FRANCIS E. MORSE.
FREDERICK C. WILLIAMS.
G. H. MITCHELL.
H. DRUSILLA MITCHELL.

Filed Nov. 10, 1896.
GEORGE A. CONANT,
Assistant Clerk.

Hartford County Superior Court, November 11, 1896.

EDWARD A. FREEMAN, Trustee.

Appeal from doings of commissioners on estate of H. Drusilla Mitchell.

Answer to Claim of First National Bank of Chicago.

1. Paragraph 1 is denied. Said writing, Exhibit "A," was prepared by said bank at said Chicago and there signed by the members of the copartnership of Morse, Mitchell & Williams; and, thereafter, pursuant to an agreement between said bank and said copartnership, said writing was taken by their agent to the domicil of said H. Drusilla Mitchell, at Bristol, in this State, who,
46 being solicited so to do, there signed said writing, and then and there delivered the same to the agent of said bank and copartnership who transmitted it, by mail, to said Chicago.

2. Said H. Drusilla Mitchell, at the time of signing said writing, was a married woman, the wife of George H. Mitchell of said Bristol, to whom she was married in 1857, at said Bristol, where she then, and ever since has, resided.

3. At the date of said writing, said Morse, Mitchell & Williams was indebted and otherwise liable to said bank in a large sum, to wit: $25,000.00 and more; and said bank did not, thereafter, give other or further credit to said copartnership. Paragraph 2 is denied.

4. The appellant has not sufficient information to form a belief

as to paragraph 3. Paragraphs 4 and 6 are denied, and paragraph 5 is admitted.

EDWARD A. FREEMAN, *Trustee,*
By T. M. MALTBIE, *His Attorney.*

Filed Nov. 13, 1896.
GEORGE A. CONANT,
Assistant Clerk.

Hartford County Superior Court, December 15, 1896.

EDWARD A. FREEMAN, Trustee.

Appeal from doings of commissioners on estate of H. Drusilla Mitchell.

Reply of First National Bank of Chicago to Defendant's Answer.

1. Paragraph 2 is admitted.
2. All other allegations of fact in said answer are denied.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE, *Its Attorneys.*

Filed Dec. 16, 1896.
GEORGE A. CONANT,
Assistant Clerk.

47 Superior Court, Hartford County, December 16, 1896.

EDWARD A. FREEMAN, Trustee.

Appeal from doings of commissioners, estate of H. Drusilla Mitchell, insolvent debtor.

Reservation.

In the above case all the parties consent that the same may be reserved for the advice of the supreme court of errors as to the judgment to be therein rendered, and request this court to so reserve said case upon the issues joined and the agreed facts.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE, *Attorneys.*
EDWARD A. FREEMAN, *Trustee,*
By T. M. MALTBIE, *Attorney.*

Filed Dec. 16, 1896.
GEORGE A. CONANT,
Assistant Clerk.

Superior Court, Hartford County, December 17, 1896.

EDWARD A. FREEMAN, Trustee.

Appeal from doings of commissioners, estate of H. Drusilla Mitchell, insolvent debtor.

Finding of Facts.

1. The appellant is trustee of the assigned estate of said H. Drusilla Mitchell, duly appointed and qualified in the court of probate for the district of Bristol.

2. Said bank is organized under the laws of the United States and engaged in the business of banking at Chicago, in the State of Illinois.

48 3. Said H. Drusilla Mitchell was born and has always resided in Bristol, State of Connecticut. She was married there in 1857 to George H. Mitchell, and, with her said husband, established a home at Forestville, in said Bristol, where they resided until his death, which occurred March 6, 1896, and where she now resides.

4. Said George H. Mitchell was a member of the firm of Morse, Mitchell & Williams, a copartnership located at said Chicago, engaged in mercantile and real-estate business. The other members of said firm were Francis E. Morse and Frederick C. Williams, both of said Chicago.

5. Said Morse, Mitchell & Williams kept an account and did business with said First national bank; and on the 20th day of February, 1891, were largely indebted to said bank, viz., in the sum of twenty thousand dollars ($20,000.00) or more, as evidenced by their notes payable to said bank, which have been renewed, in part, from time to time, as stated in paragraph 9.

6. On said February 20, 1891, said firm, and said Morse, Williams, and George H. Mitchell executed to said bank, at Chicago, the paper, a copy of which is hereto annexed marked "A." Said paper was prepared by said bank which had agreed with said firm to continue the line of credits to it upon the execution of said paper by said firm and its individual members and by Mrs. H. Drusilla Mitchell, then at her home in said Bristol.

7. Said George H. Mitchell thereupon took said paper and brought it with him to his residence at said Forestville, and there procured his said wife, H. Drusilla Mitchell, to sign the same, and the same was thereafter by him enclosed, addressed and sent by mail, to said Morse in Chicago, who delivered said paper to said bank.

8. Said bank continued to extend credit to said Morse, Mitchell & Williams until said firm became insolvent and made an assignment for the benefit of its creditors on July 30, 1893.

49 9. At the time of such insolvency and assignment, said bank held and owned the notes of said Morse, Mitchell & Williams, renewals of unpaid portions of said first-mentioned notes for

the sum of sixteen thousand five hundred dollars ($16,500.00), copies of which renewal notes, marked respectively "1," "2," "3," "4," "5," are hereto attached. Also note made by Elizabeth Ewing, two hundred eighty-nine dollars, and sixty cents ($289.60), endorsed by Morse, Mitchell & Williams, copy attached marked "6." All the above notes are still owned by said bank and are unpaid.

10. Said bank also held and owned notes made by F. E. Morse & Son, another business firm of said Chicago, said F. E. Morse being the above-named Francis E. Morse, for the sum of eighty-five hundred dollars ($8,500.00), which notes were endorsed by said Morse, Mitchell & Williams and discounted for the benefit of said Morse & Son by said bank, copies of said notes marked "7" and "8" are hereto attached. Said F. E. Morse & Son became insolvent and made an assignment for the benefit of their creditors, and said notes were presented as a claim against the estate of said F. E. Morse & Son; and on May 27, 1895, said bank was paid seventeen hundred, nineteen dollars and sixty-four cents ($1,719.64) as a dividend upon said notes. No further payment has been made on said notes. Notice of non-payment of said notes was not given to said endorsers, unless constructive notice may be found upon the foregoing facts.

11. Said bank, December 26, 1893, prepared the letter addressed to J. H. Welch, Esq., executor of the will of E. N. Welch, deceased, copy of which is annexed hereto marked "B," which letter was sent to said George H. Mitchell, at Forestville, Conn., by said bank, to procure the signature of his wife, said H. Drusilla Mitchell, thereto. Said George H. Mitchell procured said H. Drusilla Mitchell to sign said letter at her home in said Bristol and transmitted the same, by mail, to said bank at Chicago on January 23, 1894. Said H. Drusilla Mitchell executed no other paper or assignment to said bank of her interest in the estate of E. N. Welch, deceased. Upon the receipt of said letter by said bank, said bank executed and transmitted to George H. Mitchell, by mail, the receipt, copy of which is attached marked "C," but the same was never delivered by said George H. Mitchell to said H. Drusilla Mitchell, or its existence made known to her until after his death.

12. The printed statutes, and the decisions of courts of last resort, of the State of Illinois, are referred to and made a part hereof, as showing the existing law of said State at the time of said several transactions.

13. Said claim was duly presented to the commissioners on the insolvent estate of said H. Drusilla Mitchell and by them allowed at the sum of $28,070.30, and the security therefor was by them found to be equal in value to said amount.

Upon the foregoing facts, by consent of all the parties to the record, said appeal is reserved for the advice of the supreme court of errors next to be held at Hartford, in the first judicial district, on the first Tuesday in January, 1897.

GEORGE W. WHEELER, *Judge.*

EXHIBIT "A."

We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they may desire from time to time, and in consideration of all and any such credit given we hereby guarantee any and all indebtedness now due, or which may hereafter become due, from them to said bank, to the extent of thirty thousand dollars, and waive notice of the acceptance of this guaranty and of any and all indebtedness at any time covered by the same. This guaranty shall continue until
51 written notice from us of the discontinuance thereof shall be received by said The First National Bank of Chicago.

MORSE, MITCHELL & WILLIAMS.
FRANCIS E. MORSE.
FREDERICK C. WILLIAMS.
G. H. MITCHELL.
H. DRUSILLA MITCHELL.

Chicago, Ill., February 20, 1891.

EXHIBIT "1."

$3,000. CHICAGO, *April* 12, 1893.

Four months after date we promise to pay to the order of the First national bank, three thousand dollars at 34 and 36 Washington street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "2."

$5,000. CHICAGO, *April* 17, 1893.

Four months after date we promise to pay to the order of the First national bank, five thousand dollars at 34 and 36 Washington street. Value received.

MORSE, MITCHELL & WILLIAMS.

No. 87773. EXHIBIT "3."

$5,000. CHICAGO, ILL., *May* 16, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago, five thousand dollars, with interest at seven per cent. per annum after due at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

Payable at 34 and 36 Washington street, Venetian bldg.

EXHIBIT "4."

$2,500. CHICAGO, *June* 10, 1893.

Four months after date we promise to pay to the order of
52 First national bank, twenty-five hundred dollars at 34 Washington street. Value received.

MORSE, MITCHELL & WILLIAMS.

Indorsed: F. E. Morse & Son.

No. 92099. EXHIBIT "5."

$1,000. CHICAGO, ILL., *June* 30, 1893.

Ninety days after date we promise to pay to the order of the First National Bank of Chicago, one thousand dollars, with interest at seven per cent. per annum after due, at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "6."

$289.60. CHICAGO, *June* 8, 1893.

Three months after date I promise to pay to the order of Morse, Mitchell & Williams, two hundred eighty-nine dollars and sixty cents at 34 Washington street. Value received. Seven per cent. from date.

ELIZABETH EWING.

Indorsed.

Paid 10/5/93	$50.00
" 10/31/93	10.00
" 12/5/93	5.00
" 5/5/94	10.00
" 8/8/95	50.00

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "7."

$5,000. CHICAGO, *April* 1, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago, five thousand dollars at 100 State street, Chicago, Ill. Value received.

F. E. MORSE & SON.

Indorsed: Paid 5/27/95, $1,719.64. Paid by assignee. Morse, Mitchell & Williams.

53 EXHIBIT "8."

$3,500. CHICAGO, *June* 10, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago, thirty-five hundred dollars at the First national bank. Value received.

F. E. MORSE & SON.

Indorsed: Morse, Mitchell & Williams.

EXHIBIT "B."

CHICAGO, ILL., *December* 26, 1893.

J. H. Welch, Esq., executor of the will of E. N. Welch, deceas ed Forestville, Conn.

DEAR SIR: I desire to notify you that I have assigned, set over, and transferred to the First National Bank of Chicago, Ill., all my right, title, and interest in and to so much of the estate of my late father, E. N. Welch, deceased, as has not been distributed, and you will, therefore, account for and pay over to said First National Bank of Chicago, instead of to me, all money and other property coming to me or to which I may be entitled at any time hereafter from said estate of my deceased father. Please note at the foot hereof, for the satisfaction and security of said bank, that you will undertake to do this, and in case you should cease to be executor of the estate otherwise than by death you would promptly give notice of the fact to said bank in order that it might give express notice of this assignment to your successor in the trust.

Yours truly, H. DRUSILLA MITCHELL.

I take notice of the foregoing and will comply therewith.

J. H. WELCH, *Executor.*

54 EXHIBIT "G."

DECEMBER 26, 1893.

Received of H. Drusilla Mitchell an assignment of all her right, title, and interest in the undistributed estate of her late father, E. N. Welch, deceased, the same being so received in pledge to secure the payment of her indebtedness to the undersigned, its successors or assigns, upon her guaranty of certain notes made or endorsed by Morse, Mitchell & Williams of Chicago, amounting to $26,000, more or less.

In consideration of security pledged as aforesaid, the undersigned undertakes and promises to surrender and reassign the same, or so much thereof as shall not have been applied on said indebtedness, at any time on demand after payment in full of the indebtedness aforesaid, and not to enforce or demand payment of said indebtedness from said H. Drusilla Mitchell, her heirs, executors, or ad-

ministrators prior to January 1, 1895, except from the interest or property assigned as security aforesaid.

THE FIRST NATIONAL BANK
OF CHICAGO,
By L. J. GAGE, *Pt.*

Filed and granted Dec. 17, 1896.
GEORGE A. CONANT,
Assistant Clerk.

Superior Court, Hartford County, December 17, 1896.

EDWARD A. FREEMAN, Trustee.

Appeal from doings of commissioners, estate of H. Drusilla Mitchell

Reservation.

The above-entitled case, by consent and at the request of all the parties to the record, is reserved for the advice of the supreme court of errors upon the issues joined and facts agreed and stipulated by the parties.

GEORGE W. WHEELER, *Judge.*

55 EDWARD A. FREEMAN, Trustee.

Appeal from doings of commissioners on estate of H. Drusilla Mitchell.

(Argued January 13th, decided February 23d, 1897.)

BALDWIN, *J.:*

Mrs. Mitchell, being a citizen of Connecticut, married a citizen of Connecticut in 1857, and they continued to reside in this State until his death. Her marriage gave her, under the laws of the State then in force, substantially the status which belonged to a married woman at common law. Her personal identity, from a judicial point of view, was merged in that of her husband. Thereafter, during coverture, she could make no contract that would be binding upon her, even by his express authority. 1 Swift's Dig., 30. If she assumed to make such a contract, it was absolutely void.

These personal disabilities the common law imposed partly for the protection of the husband and partly for that of the wife. To preserve what property rights remained to her, as far as might be, against his creditors, various statutes were from time to time enacted, until this long ago became recognized as the established policy of the State. Jackson *v.* Hubbard, 36 Conn., 10, 15. These statutes were mainly designed to protect her against others. The common law was sufficient to protect her against herself, and prior to 1877 it precluded her from making any contract as surety for her husband. Kilbourn *v.* Brown, 56 Conn., 149. A statute of that year establishes a different rule for women married after its enactment, but does not enlarge the rights of those previously married. General Statutes, sec. 2796.

56 Whenever a peculiar status is assigned by law to the members of any particular class of persons affecting their general position in or with regard to the rest of the community, no one belonging to such class can vary by any contract the rights and liabilities incident to this status. Anson's Principles of Contract, 328. If he could, his private agreements would outweigh the law of the land. *Jus publicum privatorum pactis mutari non potest.*

Coverture constitutes such a status, and one of its incidents in this State at the time of Mrs. Mitchell's marriage was a total disability to contract. So far as contracts of suretyship for their husbands are concerned, the disability of women married before 1877 remains absolute unless both husband and wife have executed for public record a written contract by which both accede to the provisions of the statute of that year and accept the rights which it offers to them. General Statutes, sec. 2798. No such contract was ever executed by Mrs. Mitchell.

The claim in favor of the First National Bank of Chicago which has been allowed by the commissioners on her estate was founded on a debt due from a mercantile firm in Illinois of which her husband was a member, for which she had assumed to make herself responsible, as guarantor, by a writing dated in Illinois, but signed in this State. The creditor had agreed, in Illinois, with the firm to forbear suit if she and they (as a firm and individually) would become parties to such a paper, and, after they had signed it there, had given it to her husband in Illinois to take to her in this State for execution. He procured her signature and then mailed the instrument to one of his partners at Chicago, by whom it was there delivered to the bank. The agreement of forbearance had been

57 conditioned on the execution of the guaranty by the firm, its individual members, and Mrs. Mitchell. It was her credit only that was to give it value. Its execution by the others gave the bank nothing which it did not have as fully before. It did not become complete until it received her signature. It did not then become operative as a security until it had been delivered to the creditor.

Her husband cannot be deemed to have acted, in procuring Mrs. Mitchell's signature, as the agent of the bank. No finding to that effect was made by the trial court, and no such agency is implied from the circumstances of the transaction. He had a direct interest in obtaining the desired extension of credit. He was a principal in the obligation. He sent the paper, as soon as it was completed, not to the bank, but to another of the principals. If he represented any one but himself, it was his copartner. The delivery of the paper by his wife to him, therefore, after her signature had been attached, was not a delivery to the bank, but simply purported to give him authority as her agent to make or procure such a delivery at some subsequent time.

If, therefore, the guaranty, so far as concerns her obligation upon it, was ever delivered, it was delivered and so first took effect in Chicago; but its delivery there could not affect her, unless it was made by her or by her authorized agent. Morse, the partner who

actually handed it to the bank, stood in no better position than her husband, whether regarded as the servant of the latter or as a partner with him. In either case, the agency by virtue of which the delivery was made was created, if at all, in Connecticut.

But to create an agency is to enter into a contractural relation. Mrs. Mitchell had no capacity to make any contract whereby her legal position in respect to all or any of the other members
58 of the community would be varied. It would have varied it in respect to her husband, could she have constituted him her agent to put her, by delivery of an instrument of guaranty, in the situation of a surety for his debt to a third party. He therefore derived no authority from her to make the delivery to the bank, and as to her the instrument never was delivered.

It is true that the guaranty, if a binding contract, was a contract made in Illinois. It might also be assumed, so far as concerns the law of this case (although this is a point as to which we express no opinion), that it was one to be performed in Illinois, and that as to the principals in the transaction it was fully an Illinois contract and to be governed by the law of Illinois as respects any question as to its validity. By that law a married woman was free to enter into such an engagement and to constitute an agent for that purpose; but the *lex loci contractus* is a rule of decision only when there is a contract so made as to be subject to that law. It is a *petitio principii* to say that because the guaranty was delivered in Chicago it is therefore to be held effectual or ineffectual as against Mrs. Mitchell by the law of that place. The underlying question is, was it as to her ever delivered at all? It was not so delivered, unless delivered by her authority, and by the laws of Connecticut, where she assumed to give such authority, she could not give it. Cooper *v.* Cooper, L. R., 13 App. Cases, 88, 99, 100; Story on the Conflict of Laws, sects. 64, 65, 66*a*, 136; Dicey on the Conflict of Laws, chap. XVIII, rule 123.

Had Mrs. Mitchell been within the State of Illinois when she signed the guaranty it may be that her personal presence would have so far made her a resident of that State as to subject
59 her to its laws in respect to acts done within its jurisdiction; but, as whatever was done in Illinois to bind her to the bank was done under an agency constituted in Connecticut, it is the law of Connecticut which must determine as to the authority of the agent, and so as to the validity of the obligation which he as such undertook to impose upon her by the delivery in Chicago of the paper signed by her in Bristol.

The order drawn by Mrs. Mitchell on the executor of her father's will, directing him to pay over to the bank whatever might otherwise be coming to her as a part of the estate in his hands, though dated at Chicago, was brought to her in behalf of the bank in Connecticut, signed and given back to the agent of the bank in Connecticut, accepted by the executor in Connecticut, and then mailed in Connecticut by its agent to the bank at Chicago. The whole transaction, therefore, was completed here. The order became operative, if at all, to transfer her interest in her father's estate when the exec-

utor had notice of it and agreed to comply with it by handing his written acceptance to the agent of the bank. That Mr. Mitchell was acting in that capacity seems clear from the finding that the bank, after the firm had become insolvent and made an assignment for the benefit of its creditors, prepared the paper and sent it to him to procure her signature to it. No assignment which she could make would benefit the firm. If its result was to satisfy the claim of the bank she would be subrogated to its place and their creditors would receive no greater dividend. The order, also, was for the payment of a share in the estate of a deceased citizen of Connecticut in the course of settlement in its courts. Under these circumstances its validity must be determined by the laws of Connecticut and being dependent on the contractural act of a married woman,
60 not for the benefit of herself, her family, or her estate, it was void.

There have been cases not differing essentially in principle from that at bar, in which courts, to whose opinions great consideration is due, have come to conclusions varying from those which we have reached. The leading one is Milliken *v.* Pratt, 125 Mass., 374. There a guaranty by a married woman of such debts as her husband might thereafter contract was signed in Massachusetts, delivered there by her to him, and by him there mailed to the other party in Maine. The court held that the contract became complete when the guaranty was received and acted upon by the latter and not before, and enforced it as one made and to be performed in Maine, where married women then had power to enter into such agreements. No reference was made to the fact (which may, perhaps, have been immaterial under the laws of Massachusetts) that the delivery was made by the husband acting as the agent of the wife—a fact which, in our view, under the common law of Connecticut, is of controlling importance.

Engagements which coverture prevents a woman from making herself she cannot make through the interposition of an agent whom she assumes to constitute as such in the State of her domicil. If this were not so the law could always be evaded by her appointment of an attorney to act for her in the execution of contracts. No principle of comity can require a State to lend the aid of its courts to enforce a security which rests on a transgression of its own law by one of its own citizens, committed within its own territory. Such was, in effect, the act by which Mrs. Mitchell undertook to do, what she had no legal capacity to do, by making her husband the agent to deliver the guaranty to the bank. He had no more power to make it operative by delivery in Chicago
61 to one of his creditors in Illinois than he would have had to make it operative here had it been drawn in favor of one of his creditors in Connecticut. It is not the place of delivery that controls, but the power of delivery.

The superior court is advised to disallow all and every part of the claim of the First national bank.

In this opinion the other judges concurred.

62 [Endorsed:] 8521. Edward A. Freeman, trustee. Appeal from doings of commissioners on estate of H. Drusilla Mitchell. Opinion of supreme court of errors. Filed Feb. 25, 1897. George A. Conant, assistant clerk.

63 At a superior court holden at Hartford, in and for the county of Hartford, in the State of Connecticut, on the second Tuesday of October, in the year of our Lord one thousand eight hundred and ninety-six.

Present: Hon. Frederic B. Hall, judge.

Hartford County Superior Court, March 2, 1897.

EDWARD A. FREEMAN, Trustee. 8521.

Appeal from doings of commissioners on estate of H. Drusilla Mitchell, an insolvent debtor.

Judgment.

This appeal from the doings of the commissioners on the estate of H. Drusilla Mitchell, an insolvent debtor, in allowing the claims of the First National Bank of Chicago against said estate for $28,070.30 and finding that the same was fully secured, came to this court on the first Tuesday of October, 1896, when the parties appeared and were at issue to the court as on file.

This court heard the parties and, with their consent in writing, reserved said appeal for the advice of the supreme court of errors as to the judgment to be rendered.

64 The supreme court of errors advised this court to disallow all the claims of said First National Bank of Chicago against said estate.

Whereupon it is adjudged that all the claims of said First National Bank of Chicago against said estate of H. Drusilla Mitchell, insolvent debtor, be, and the same are, disallowed, and that the said appellant, Edward A. Freeman, trustee, recover from said First National Bank of Chicago his costs, taxed and allowed at eighty-six dollars.

By the court:

GEORGE A. CONANT,
Assistant Clerk.

65 All which I have caused by these presents to be exemplified and the seal of the superior court of the State of Connecticut in and for the county of Hartford to be hereunto affixed, and do hereby certify that the within and foregoing is a true copy of said original files and record.

In testimony whereof I hereunto set my hand and affix the seal

of said superior court, at Hartford, in said county and State, this sixteenth day of March, A. D. 1899.

[Seal Superior Court, Hartford County, Ct.]

GEORGE A. CONANT,
Clerk of the Superior Court of the State of Connecticut in and for the County of Hartford.

[Ten-cent U. S. internal-revenue stamp, canceled Mar., '99. G. A. C.]

STATE OF CONNECTICUT, } *ss:*
County of Hartford, }

I, John M. Thayer, a judge of the superior court of the State of Connecticut, do hereby certify that George A. Conant, whose name is subscribed to the foregoing exemplification, is the clerk of said superior court in and for said Hartford county, duly appointed and sworn; that the above is his genuine official signature, and that full faith and credit are due to his official act.

66 I further certify that the seal affixed to said exemplification is the seal of the superior court of said State in and for said Hartford county, and that the foregoing attestation is in due form.

Dated at Hartford, this 16th day of March, A. D. 1899.

JOHN M. THAYER,
A Judge of the Superior Court of the State of Connecticut.

[Ten-cent U. S. internal-revenue stamp, canceled Mar. 16, 1899. G. A. C.]

67 To all persons to whom these presents shall come, Greeting:

Know ye that I, George A. Conant, clerk of the supreme court of errors of the State of Connecticut, first judicial district, in and for the county of Hartford, in said State, having inspected the files and records in said court in my custody, do find there remaining on file a certain record in a cause known and entitled as "Edward A. Freeman, trustee, appeal from the doings of commissioners on estate of H. Drusilla Mitchell, insolvent debtor," in the words and figures following, to wit:

[Seal Supreme Court of Errors, Con.]

GEORGE A. CONANT,
Clerk of the Supreme Court of Errors for the First Judicial District, County of Hartford, State of Connecticut.

68 Supreme Court of Errors, First Judicial District, January Term, 1897.

EDWARD A. FREEMAN, Trustee.

Appeal from doings of commissioners on estate of H. Drusilla Mitchell, insolvent debtor.

Reservation.

Superior Court, Hartford County, First Tuesday of October, 1896.

STATE OF CONNECTICUT, } *ss.*:
Hartford County, }

At a court of probate holden at Bristol, within and for the district of Bristol, on the 30th day of September, A. D. 1896:

Present: Elbert E. Thorpe, Esq., judge.

Estate of H. DRUSILLA MITCHELL, Insolvent Debtor.

Edward A. Freeman of Plainville, in said county, as trustee of the estate of H. Drusilla Mitchell aforesaid, appears in court within one month next after the report of the commissioners on said estate is returned into said court of probate, and accepted and moves for an appeal to the superior court at Hartford, within and for the county of Hartford, on the first Tuesday of October, 1896, from the doings of said commissioners, in allowing a claim in favor of First National Bank of Chicago, State of Illinois, and finding the same fully secured, which said claim exceeds the sum of seventy dollars, viz., $28,070 30.

Said motion for an appeal is allowed and granted by this court.

And the said Edward A. Freeman, as principal, and Adrian J. Muzzy, of Bristol, Conn., as surety, acknowledge themselves jointly and severally to be indebted and bound to the State of Connecticut in the sum of one hundred dollars, conditioned that said
69 appellant shall prosecute said appeal to effect and answer all damages in case he make not his plea good.

And it is ordered by this court that notice of said appeal and of this order be given to said First national bank by leaving a true and attested copy of said appeal and order with the attorneys and representatives in this State, of said bank, or by mailing a like copy, postage paid, addressed to said First national bank at Chicago, Ill., by the sheriff of the county of Hartford, his deputy, or by either of the constables of the town of Bristol, or by any indifferent person, at least five days before above return day of said superior court. And return make to said court.

Certified from record.

ELBERT E. THORPE, *Judge.*

HARTFORD, *September* 30, 1896.

Service of the foregoing appeal from commissioners is hereby accepted and further service of the same is waived, and it is agreed that the same may be entered upon the docket of the superior court

and proceeded with in the same manner as if the order of notice herein had been complied with.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE, *Attorneys.*

Superior Court, Hartford County, November 10, 1896.

EDWARD A. FREEMAN, Trustee.

Appeal from doings of commissioners on estate of H. Drusilla Mitchell.

Statement of Claim.

1. The said H. Drusilla Mitchell, on the 20th day of February, 1891, executed and delivered to said First national bank at Chicago an instrument in writing of which a copy is hereto attached marked Exhibit "A."

70 2. Thereafter, and relying upon said instrument, said bank extended credit to said Morse, Mitchell & Williams to the extent of $30,000, as evidenced by sundry notes, copies of which are hereto attached marked respectively Exhibits "1," "2," "3," "4," "5," "6," "7," "8."

3. Said notes remain unpaid and are the property of said bank.

4. The amount of appellee's claim is $28,070.30, with interest thereon from the 17th day of June, 1896.

5. On June 17, 1896, and before the expiration of the time limited for the presentation of claims against said estate, the said claim was presented to said commissioners.

6. Said claim is secured by an assignment to said bank, from said Mitchell, of her interest in the estate of Elisha N. Welch, deceased.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE, *Its Attorneys.*

HARTFORD, CONN., *June* 17, 1896.

Estate of H. Drusilla Mitchell, E. A. Freeman, trustee, to the First National Bank of Chicago, Dr.

To amount of sundry notes guaranteed by H. Drusilla Mitchell (copies hereto attached)	$25,289.60
To interest on said notes from maturity of each to date.	4,738.34
	$30,027.94
Credit by sundry payments and interest thereon to date.	1,957.64
	$28,070.30

Exhibits "1," "2," "3," "4," "5," "6," "7," and "8" annexed to statement of claim, are identical with Exhibits "1," "2," "3," "4," "5," "6," "7," and "8" annexed to finding, page 6, of this record.

71 EXHIBIT "A."

We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they may desire from time to time, and in consideration of any and all such credit given, we hereby guarantee any and all indebtedness now due, or which may hereafter become due, from them to said bank, to the extent of thirty thousand dollars, and waive notice of the acceptance of this guaranty and of any and all indebtedness at any time covered by the same. This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by said The First National Bank of Chicago.

Chicago, Ill., February 20, 1891.

MORSE, MITCHELL & WILLIAMS.
FRANCIS E. MORSE.
FREDERICK C. WILLIAMS.
G. H. MITCHELL.
H. DRUSILLA MITCHELL.

Filed Nov. 10, 1896.
GEORGE A. CONANT,
Assistant Clerk.

Hartford County Superior Court, November 11, 1896.

EDWARD A. FREEMAN, Trustee.

Appeal from doings of commissioners on estate of H. Drusilla Mitchell.

Answer to Claim of First National Bank of Chicago.

1. Paragraph 1 is denied. Said writing, Exhibit "A," was prepared by said bank at said Chicago and there signed by the members of the copartnership of Morse, Mitchell & Williams; and, thereafter, pursuant to an agreement between said bank and said copartnership, said writing was taken by their agent to the domicil of said H. Drusilla Mitchell, at Bristol, in this State, who,
72 being solicited so to do, there signed said writing, and then and there delivered the same to the agent of said bank and copartnership who transmitted it, by mail, to said Chicago.

2. Said H. Drusilla Mitchell, at the time of signing said writing, was a married woman, the wife of George H. Mitchell of said Bristol, to whom she was married in 1857, at said Bristol, where she then, and ever since has, resided.

3. At the date of said writing, said Morse, Mitchell & Williams was indebted and otherwise liable to said bank in a large sum, to wit: $25,000.00 and more; and said bank did not, thereafter, give other or further credit to said copartnership. Paragraph 2 is denied.

4. The appellant has not sufficient information to form a belief

as to paragraph 3. Paragraphs 4 and 6 are denied, and paragraph 5 is admitted.

EDWARD A. FREEMAN, *Trustee,*
By T. M. MALTBIE, *His Attorney.*

Filed Nov. 13, 1896.
GEORGE A. CONANT,
Assistant Clerk.

Hartford County Superior Court, December 15, 1896.

EDWARD A. FREEMAN, Trustee.

Appeal from doings of commissioners on estate of H. Drusilla Mitchell.

Reply of First National Bank of Chicago to Defendant's Answer.

1. Paragraph 2 is admitted.
2. All other allegations of fact in said answer are denied.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE, *Its Attorneys.*

Filed Dec. 16, 1896.
GEORGE A. CONANT,
Assistant Clerk.

73 Superior Court, Hartford County, December 16, 1896.

EDWARD A. FREEMAN, Trustee.

Appeal from doings of commissioners, estate of H. Drusilla Mitchell, insolvent debtor.

Reservation.

In the above case all the parties consent that the same may be reserved for the advice of the supreme court of errors as to the judgment to be therein rendered, and request this court to so reserve said case upon the issues joined and the agreed facts.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE, *Attorneys.*
EDWARD A. FREEMAN, *Trustee,*
By T. M. MALTBIE, *Attorney.*

Filed Dec. 16, 1896.
GEORGE A. CONANT,
Assistant Clerk.

Superior Court, Hartford County, December 17, 1896.

EDWARD A. FREEMAN, Trustee.

Appeal from doings of commissioners, estate of H. Drusilla Mitchell, insolvent debtor.

Finding of Facts.

1. The appellant is trustee of the assigned estate of said H. Drusilla Mitchell, duly appointed and qualified in the court of probate for the district of Bristol.

2. Said bank is organized under the laws of the United States and engaged in the business of banking at Chicago, in the State of Illinois.

74 3. Said H. Drusilla Mitchell was born and has always resided in Bristol, State of Connecticut. She was married there in 1857 to George H. Mitchell, and, with her said husband, established a home at Forestville, in said Bristol, where they resided until his death, which occurred March 6, 1896, and where she now resides.

4. Said George H. Mitchell was a member of the firm of Morse, Mitchell & Williams, a copartnership located at said Chicago, engaged in mercantile and real-estate business. The other members of said firm were Francis E. Morse and Frederick C. Williams, both of said Chicago.

5. Said Morse, Mitchell & Williams kept an account and did business with said First national bank; and on the 20th day of February, 1891, were largely indebted to said bank, viz., in the sum of twenty thousand dollars ($20,000.00) or more, as evidenced by their notes payable to said bank, which have been renewed, in part, from time to time, as stated in paragraph 9.

6. On said February 20, 1891, said firm, and said Morse, Williams, and George H. Mitchell executed to said bank, at Chicago, the paper, a copy of which is hereto annexed marked "A." Said paper was prepared by said bank which had agreed with said firm to continue the line of credits to it upon the execution of said paper by said firm and its individual members and by Mrs. H. Drusilla Mitchell, then at her home in said Bristol.

7. Said George H. Mitchell thereupon took said paper and brought it with him to his residence at said Forestville, and there procured his said wife, H. Drusilla Mitchell, to sign the same, and the same was thereafter by him enclosed, addressed and sent by mail, to said Morse in Chicago, who delivered said paper to said bank.

8. Said bank continued to extend credit to said Morse, Mitchell & Williams until said firm became insolvent and made an assignment for the benefit of its creditors on July 30, 1893.

75 9. At the time of such insolvency and assignment, said bank held and owned the notes of said Morse, Mitchell & Williams, renewals of unpaid portions of said first-mentioned notes for the sum of sixteen thousand five hundred dollars ($16,500.00), copies

of which renewal notes, marked respectively "1," "2," "3," "4," "5," are hereto attached. Also note made by Elizabeth Ewing, two hundred eighty-nine dollars, and sixty cents ($289.60), endorsed by Morse, Mitchell & Williams, copy attached marked "6." All the above notes are still owned by said bank and are unpaid.

10. Said bank also held and owned notes made by F. E. Morse & Son, another business firm of said Chicago, said F. E. Morse being the above-named Francis E. Morse, for the sum of eighty-five hundred dollars ($8,500.00), which notes were endorsed by said Morse, Mitchell & Williams and discounted for the benefit of said Morse & Son by said bank, copies of said notes marked "7" and "8" are hereto attached. Said F. E. Morse & Son became insolvent and made an assignment for the benefit of their creditors, and said notes were presented as a claim against the estate of said F. E. Morse & Son; and on May 27, 1895, said bank was paid seventeen hundred, nineteen dollars and sixty-four cents ($1,719.64) as a dividend upon said notes. No further payment has been made on said notes. Notice of non-payment of said notes was not given to said endorsers, unless constructive notice may be found upon the foregoing facts.

11. Said bank, December 26, 1893, prepared the letter addressed to J. H. Welch, Esq., executor of the will of E. N. Welch, deceased, copy of which is annexed hereto marked "B," which letter was sent to said George H. Mitchell, at Forestville, Conn., by said bank, to procure the signature of his wife, said H. Drusilla Mitchell, thereto. Said George H. Mitchell procured said H. Drusilla Mitchell to sign said letter at her home in said Bristol and transmitted the same, by mail, to said bank at Chicago on January 23, 1894.

Said H. Drusilla Mitchell executed no other paper or as-
76 signment to said bank of her interest in the estate of E. N. Welch, deceased. Upon the receipt of said letter by said bank, said bank executed and transmitted to George H. Mitchell, by mail, the receipt, copy of which is attached marked "C," but the same was never delivered by said George H. Mitchell to said H. Drusilla Mitchell, or its existence made known to her until after his death.

12. The printed statutes, and the decisions of courts of last resort, of the State of Illinois, are referred to and made a part hereof, as showing the existing law of said State at the time of said several transactions.

13. Said claim was duly presented to the commissioners on the insolvent estate of said H. Drusilla Mitchell and by them allowed at the sum of $28,070.30, and the security therefor was by them found to be equal in value to said amount.

Upon the foregoing facts, by consent of all the parties to the record, said appeal is reserved for the advice of the supreme court of errors next to be held at Hartford, in the first judicial district, on the first Tuesday in January, 1897.

GEORGE W. WHEELER, *Judge.*

EXHIBIT "A."

We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they may desire from time to time, and in consideration of all and any such credit given we hereby guarantee any and all indebtedness now due, or which may hereafter become due, from them to said bank, to the extent of thirty thousand dollars, and waive notice of the acceptance of this guaranty and of any and all indebtedness at any time covered by the same. This guaranty shall continue until
77 written notice from us of the discontinuance thereof shall be received by said The First National Bank of Chicago.

MORSE, MITCHELL & WILLIAMS.
FRANCIS E. MORSE.
FREDERICK C. WILLIAMS.
G. H. MITCHELL.
H. DRUSILLA MITCHELL.

Chicago, Ill., February 20, 1891.

EXHIBIT "1."

$3,000. CHICAGO, *April* 12, 1893.

Four months after date we promise to pay to the order of the First national bank, three thousand dollars at 34 and 36 Washington street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "2."

$5,000. CHICAGO, *April* 17, 1893.

Four months after date we promise to pay to the order of the First national bank, five thousand dollars at 34 and 36 Washington street. Value received.

MORSE, MITCHELL & WILLIAMS.

No. 87773. EXHIBIT "3."

$5,000. CHICAGO, ILL., *May* 16, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago, five thousand dollars, with interest at seven per cent. per annum after due at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

Payable at 34 and 36 Washington street, Venetian bldg.

EXHIBIT "4."

$2,500. CHICAGO, *June* 10, 1893.

Four months after date we promise to pay to the order of
78 First national bank, twenty-five hundred dollars at 34 Washington street. Value received.

MORSE, MITCHELL & WILLIAMS.

Indorsed: F. E. Morse & Son.

No. 92099. EXHIBIT "5."

$1,000. CHICAGO, ILL., *June* 30, 1893.

Ninety days after date we promise to pay to the order of the First National Bank of Chicago, one thousand dollars, with interest at seven per cent. per annum after due, at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "6."

$289.60. CHICAGO, *June* 8, 1893.

Three months after date I promise to pay to the order of Morse, Mitchell & Williams, two hundred, eighty-nine dollars, and sixty cents at 34 Washington street. Value received. Seven per cent. from date.

ELIZABETH EWING.

Indorsed.

Paid 10/5/93	$50.00
" 10/31/93	10.00
" 12/5/93	5.00
" 5/5/94	10.00
" 8/8/95	50.00

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "7."

$5,000. CHICAGO, *April* 1, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago, five thousand dollars at 100 State street, Chicago, Ill. Value received.

F. E. MORSE & SON.

Indorsed: Paid 5/27/95, $1,719.64. Paid by assignee. Morse, Mitchell & Williams.

79 EXHIBIT "8."

$3,500. CHICAGO, *June* 10, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago, thirty-five hundred dollars at the First national bank. Value received.

F. E. MORSE & SON.

Indorsed: Morse, Mitchell & Williams.

EXHIBIT "B."

CHICAGO, ILL., *December* 26, 1893.

J. H. Welch, Esq., executor of the will of E. N. Welch, deceased, Forestville, Conn.

DEAR SIR: I desire to notify you that I have assigned, set over, and transferred to the First National Bank of Chicago, Ill., all my right, title, and interest in and to so much of the estate of my late father, E. N. Welch, deceased, as has not been distributed, and you will, therefore, account for and pay over to said First National Bank of Chicago, instead of to me, all money and other property coming to me or to which I may be entitled, at any time hereafter, from said estate of my deceased father.

Please note at the foot hereof, for the satisfaction and security of said bank, that you will undertake to do this, and in case you should cease to be executor of the estate, otherwise than by death, you would promptly give notice of the fact to said bank, in order that it might give express notice of this assignment to your successor in the trust.

Yours truly, H. DRUSILLA MITCHELL.

I take notice of the foregoing and will comply therewith.

J. H. WELCH, *Executor.*

80 EXHIBIT "G."

DECEMBER 26, 1893.

Received of H. Drusilla Mitchell an assignment of all her right, title, and interest in the undistributed estate of her late father, E. N. Welch, deceased, the same being so received in pledge to secure the payment of her indebtedness to the undersigned, its successors or assigns, upon her guaranty of certain notes made or endorsed by Morse, Mitchell & Williams of Chicago, amounting to $26,000, more or less.

In consideration of security pledged as aforesaid, the undersigned undertakes and promises to surrender and reassign the same, or so much thereof as shall not have been applied on said indebtedness, at any time on demand after payment in full of the indebtedness aforesaid, and not to enforce or demand payment of said indebtedness from said H. Drusilla Mitchell, her heirs, executors, or ad-

ministrators prior to January 1, 1895, except from the interest or property assigned as security aforesaid.

THE FIRST NATIONAL BANK
OF CHICAGO,
By L. J. GAGE, *Pt.*

Filed and granted Dec. 17, 1896.

GEORGE A. CONANT,
Assistant Clerk.

Superior Court, Hartford County, December 17, 1896.

EDWARD A. FREEMAN, Trustee.

Appeal from doings of commissioners, estate of H. Drusilla Mitchell.

Reservation.

The above-entitled case, by consent and at the request of all the parties to the record, is reserved for the advice of the supreme court of errors upon the issues joined and facts agreed and stipulated by the parties.

GEORGE W. WHEELER, *Judge.*

81 SUPERIOR COURT, HARTFORD COUNTY, CLERK'S OFFICE.

The above and foregoing is a true copy of record in said superior court.

Attest: C. W. JOHNSON, *Clerk.*

SUPREME COURT, HARTFORD COUNTY, CLERK'S OFFICE.

The above and foregoing is a true copy of record in said supreme court.

Attest: C. W. JOHNSON, *Clerk.*

82 At a supreme court of errors holden at Hartford, in and for the first judicial district of the State of Connecticut, on the first Tuesday of January, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: Hon. Charles B. Andrews, chief justice; Hon. David Torrance, Hon. Augustus H. Fenn, Hon. Simeon E. Baldwin, Hon. William Hamersley, associate judges.

Hon. Frederic B. Ball, judge of the superior court, attending and acting as judge of the supreme court of errors in the case of State of Connecticut *vs.* Henry T. Blake, trustee, *et al.*, in place of Baldwin, judge, disqualified.

EDWARD A. FREEMAN, Trustee.

Appeal from the doings of commissioners on estate of H. Drusill Mitchell, insolvent debtor.

THE 23D DAY OF FEBRUARY, 1897.

Reservation by the superior court in and for the county of Hartfor

Judgment.

This reservation, presenting questions of law which hav
83 arisen in the trial of said cause pending in said superior cour as may appear in the certified transcript of record and find ing of the trial judge on file in this court, was made by said supe rior court on December 17, 1896, and came to this court at its Jan uary term, 1897, when the appellant and The First National Ban of Chicago appeared and were fully heard.

Whereupon it is considered and adjudged that the said superio court be, and is hereby, advised to disallow all the claim of the ap pellee The First National Bank of Chicago.

All which I have caused by these presents to be exemplified an the seal of the supreme court of errors of the State of Connecticut t be hereunto affixed, and do hereby certify that the within and fore going is a true copy of said original files and record.

84 In testimony whereof I hereunto set my hand and affi the seal of said court, at Hartford, in said county and State this thirteenth day of March, A. D. 1899.

[Seal Supreme Court of Errors, Con.]

GEORGE A. CONANT,
Clerk of the Supreme Court of Errors for the First Judicial District, County of Hartford, State of Connecticut.

[Ten-cent U. S. internal-revenue stamp, canceled Mar. 16, '99. G. A. C.]

STATE OF CONNECTICUT, } *ss.*:
Litchfield County, }

I, Charles B. Andrews, chief justice of the supreme court of error of the State of Connecticut, do hereby certify that George A. Conant whose name is subscribed to the preceding exemplification, is th clerk of the said supreme court of errors in and for said Hartfor county, being in the first judicial district of said State o
85 Connecticut, duly appointed and sworn; that the above i his genuine official signature, and that full faith and credi are due to his official act. I further certify that the seal affixed t said exemplification is the seal of the supreme court of errors, an that the foregoing attestation is in due form.

Dated at Litchfield this 17th day of March, A. D. 1899.

CHARLES B. ANDREWS,
Chief Justice of the Supreme Court of Errors of the State of Connecticut.

[Ten-cent U. S. internal-revenue stamp, canceled Mar. 16, 1899. G. A. C.]

86 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

Being informed that there is now pending before you a suit in which The First National Bank of Chicago is plaintiff in error and H. Drusilla Mitchell *et al.* are defendants in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the district of Connecticut, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Su-

87 preme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 19th day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

88 [Endorsed:] Supreme Court of the United States. No. 805, October term, 1898. H. Drusilla Mitchell *vs.* The First National Bank of Chicago. Writ of certiorari. United States circuit court of appeals, second circuit. Filed May 24, 1899. William Parkin, clerk.

89 In the Circuit Court of Appeals of the United States for the Second Circuit.

FIRST NATIONAL BANK OF CHICAGO, Plaintiff in Error,
vs.
H. DRUSILLA MITCHELL, Defendant in Error. } No. 35.

Stipulation as to Return to Writ of Certiorari.

In the above-entitled case it is hereby stipulated by the counsel for the parties thereto that the certified transcript of the record and proceedings in the said case in the said circuit court of appeals, filed in the Supreme Court of the United States with the petition of the defendant in error for a writ of certiorari and now on file in said Supreme Court, may be used and taken as a return to the writ of certiorari issued in said case by said Supreme Court, and that a copy

of this stipulation, duly certified and returned, shall be a sufficient compliance with the command in said writ.

Dated at Hartford this 22nd day of May, A. D. 1899.

WM. C. CASE,
Counsel for Plaintiff in Error.
THEODORE M. MALTBIE,
Counsel for Defendant in Error.

90 To the honorable the Supreme Court of the United States:

The record and all proceedings in the cause whereof mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed, and under the direction of counsel for the appellant said stipulation is certified as a return to this writ.

New York, May 24th, 1899.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

[Ten-cent U. S. internal-revenue stamp, canceled 5, 24, '99. W. P.]

91 [Endorsed:] United States circuit court of appeals, second circuit. First National Bank *v.* H Drusilla Mitchell. Return to writ of certiorari.

92 [Endorsed:] File No., 17,390. Supreme Court U. S., October term, 1898. Term No., 280. The 1st National Bank of Chicago, pl'ff in error, *vs.* H. Drusilla Mitchell *et al.* Writ of certiorari and return. Filed May 27, 1899.

No. 208.

In Supreme Court of the United States,

OCTOBER TERM, 1898.

Brf. of Maltbie for Petitioner.

Supreme Court, U. S.
MAY 1 1899
JAMES H. MCKENNEY,
Clerk.

H. DRUSILLA MITCHELL,

PETITIONER,

v.

Filed May 1, 1899.

FIRST NATIONAL BANK OF CHICAGO,

RESPONDENT.

Petition for a writ of Certiorari to the U. S. Court of Appeals for the Second Circuit, in the case of the First National Bank of Chicago, Plaintiff in Error, vs. H. Drusilla Mitchell, Defendant in Error.

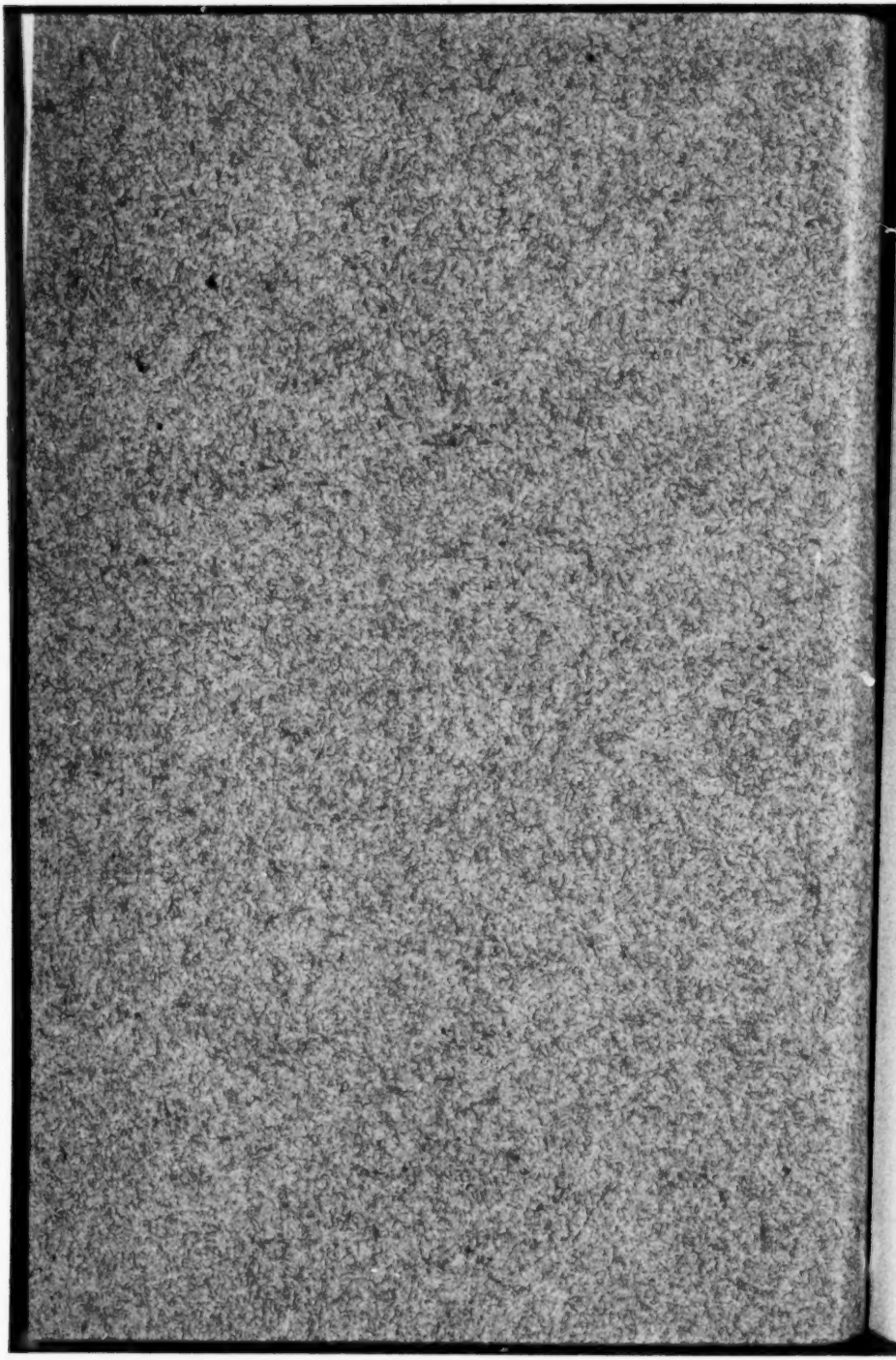
Certified Copy of Record of said case in said Circuit Court of Appeals.

Certified Copy of Record in Supreme Court of Errors and Superior Court, State of Connecticut, in the case of Freeman's Appeal from Doings of Commissioners.

Statement and Brief for Petitioner.

THEODORE M. MALTBIE, Counsel.

HARTFORD, CONN.:
Press of The Hartford Printing Company.
(Elihu Geer's Sons.)
1899.



Supreme Court of the United States.

October Term, 1898.

H. DRUSILLA MITCHELL, *Petitioner,*

vs.

THE FIRST NATIONAL BANK OF CHICAGO,

Respondent.

Petition for a Writ of *Certiorari* to the Circuit Court of Appeals for the Second Circuit.

NOTICE OF FILING PETITION.

To the above-named Respondent and to William C. Case, Esq., and Percy S. Bryant, Esq., its Attorneys.

You are hereby notified that the within petition, together with the exhibits and statements and claims of counsel, hereto annexed, will be presented to the Supreme Court of the United States on the first Monday in May, 1899, at the opening of said court.

Dated at Hartford, this 24th day of April, 1899.

THEODORE M. MALTBIE,

Attorney for Petitioner.

Supreme Court of the United States.

October Term, 1898.

H. DRUSILLA MITCHELL, *Petitioner,*

vs.

THE FIRST NATIONAL BANK OF CHICAGO,

Respondent.

ACKNOWLEDGMENT OF SERVICE.

We hereby acknowledge due and legal service of the within petition for a writ of *certiorari* and notice of the time when the same will be presented, and that we have received a copy of said petition, with exhibits and statement and claims of counsel, and we consent that said petition may be filed in accordance with such notice.

Dated at Hartford, this 24th day of April, 1899.

WM. C. CASE,
PERCY S. BRYANT.
Attorneys for Respondent.

IN THE

Supreme Court of the United States.

October Term, 1898.

H. DRUSILLA MITCHELL, *Petitioner,*

vs.

THE FIRST NATIONAL BANK OF CHICAGO,

Respondent.

Petition for Writ of *Certiorari*, Requiring the Court of Appeals for the Second Circuit to certify to the Supreme Court, for its review and determination, the case of the First National Bank of Chicago, Plaintiff in Error, *vs.* H. Drusilla Mitchell *et al.*, Defendant in Error.

To the Honorable, the Supreme Court of the United States:

The petition of H. Drusilla Mitchell respectfully shows to this Honorable Court, as follows:

1. Your petitioner is a citizen of the State of Connecticut, and resides at Bristol in said State; the respondent is a banking association, organized under and by authority of the laws of the United States, and located and having its place of business at Chicago, in the State of Illinois, and is a citizen of the State of Illinois.

2. The respondent brought its action at law against your petitioner in the Circuit Court of the United States for the District of Connecticut, based upon a guaranty, claiming thirty thousand dollars damages by complaint and writ dated December 16, 1895, and returnable and returned to said court on the fourth Tuesday of April, 1896, and said Court had and took jurisdiction of said action entirely on the ground that the opposite parties in said action were citizens of different states.

3. After the bringing of said action, and before the return day thereof, viz., on the day of February, 1896, your petitioner made an assignment in insolvency in the Court of Probate for the District of Bristol, in the State of Connecticut, and such proceedings were thereupon had in said Court of Probate that Edward A. Freeman was appointed and qualified as trustee of the insolvent estate of your petitioner, a time was limited for the presentation of claims against said insolvent estate, and commissioners were appointed to receive and act upon such claims, and report to said Court of Probate the claims allowed and disallowed by them.

4. The respondents presented to said commissioners, and asked to have allowed to them, the claim upon the guaranty which was the subject matter of the action then pending in said Circuit Court, and said commissioners allowed said claim and reported to said Court of Probate that there was due said respondents, from your petitioner, the sum of $28,070.30.

5. Said Edward A. Freeman, as trustee of said estate, then appealed from the doings of said commissioners in allowing the claim of said respondent; which appeal being duly entered in the Superior Court for the State of Connecticut, at Hartford, on the first Tuesday of October, 1896, the respondents appeared to prosecute said claim in said court, and, under the rules of said court, filed its statement of claim in substantially the same form, and declaring upon the same cause of action as was declared

upon, and the subject matter of the action then pending in said Circuit Court of the United States; and the said Freeman, trustee, filed his answer thereto, and the parties were at issue as to whether the petitioner was indebted to the respondent as respondent alleged; and such proceedings were had, under the rules of said court, that, upon an agreed statement of facts, said Superior Court reserved said case for the advice of the Supreme Court of Errors of said State, upon the issues joined and facts agreed and stipulated by the parties; and the parties having duly appeared in said Supreme Court of Errors, and being fully heard, said Supreme Court of Errors, on February 23, 1897, rendered judgment and advised said Superior Court to disallow all and every part of the claim of the respondents; and said Superior Court, March 2, 1897, rendered judgment disallowing all and every part of the claim of the respondents against said insolvent estate, and that said Freeman, trustee, recover his costs; all of which fully appears in the exemplified copy of the proceedings of said Superior Court and said Supreme Court of Errors, and of the judgment rendered in each of said courts, attached hereto, and marked respectively Exhibit "A," Exhibit "B."

6. Thereafter, on the 7th day of March, 1898, the respondent and your petitioner in said action pending in the Circuit Court of the United States for the District of Connecticut being at issue identically as in said Freeman's appeal, decided by said Courts of the State of Connecticut, and having agreed *in totidem verbis* to the facts agreed upon in said Freeman's Appeal, said Circuit Court found the issues for the defendant and rendered judgment for the defendant therein, your petitioner, to recover her costs.

7. The respondent then brought its certain writ of error against your petitioner to the Circuit Court of Appeals for the Second Circuit for the revision of the errors alleged to exist in said judgment of said Circuit Court, which writ of error was

duly served, returned, and entered in said Circuit Court of Appeals, on the 9th day of April, 1898, and was duly argued in said court on December , 1898, and thereafter, on the 1st of March, 1899, said Circuit Court of Appeals filed its opinion and directed that the judgment of said Circuit Court be reversed with instructions to the Court below to render a judgment for the plaintiff for the amount due by the terms of the guaranty. A mandate in accordance with said opinion and instructions was issued and duly filed in said Circuit Court of the United States for the District of Connecticut, where said case is now pending, and said Court is about to proceed with the same in accordance with said mandate. A certified copy of the record in the said Circuit Court of Appeals is hereto attached, marked Exhibit "C."

8. On the agreed statement of facts and upon the issues joined in said cases in the Superior Court and Supreme Court of Errors of the State of Connecticut and in said Circuit Court of Appeals, it appeared that your petitioner, a married woman, married in 1857, and then and ever since having her domicil in said State, and at all times being under the disabilities of the common law, signed, at her said domicil, a paper intended as a guaranty for certain indebtedness then existing from the copartnership of Morse, Mitchell & Williams, of Chicago, Illinois, of which her husband was a member, to the respondent. This paper was, by her husband, sent, by mail, from Bristol, Connecticut, to Morse, one of his partners, at Chicago, and, by him, given to the respondent.

9. The Supreme Court of Errors of Connecticut held that the claimed guaranty was void, that your petitioner was incapable of making such a contract, at her domicil in Connecticut, that no action could be maintained against her on such contract in Connecticut, and that there was no rule of comity which required the courts of Connecticut to extend to a non-resident a

right of action against residents of the State, not permitted to its own citizens.

10. Said United States Court of Appeals held that the claimed guaranty was valid, and that your petitioner was liable thereon; that the case depended not upon the construction of the local law of the State of Connecticut, but upon the application of the principles of general jurisprudence, and that the action could be maintained in the Circuit Court of the United States for the District of Connecticut, notwithstanding the refusal of the courts of Connecticut to permit like action to be maintained in their jurisdiction, and although "it is, in a sense, unseemly that there should be diverse judgments under such circumstances between a federal court sitting in that State and the highest court of the State."

11. Your petitioner respectfully submits that not only the diverse judgments of the State and federal courts, and the uncertainty and confusion arising therefrom, but also the right of the State to determine the capacity or incapacity of its members to contract, and whether the validity of a claimed contract of an incapable married woman which was signed at her domicil is determined by the laws of the State of her domicil, and whether comity denied by State courts can be extended by federal courts in the State, involved in the case of your petitioner, should be authoritatively and finally adjudged by this Honorable Court, upon and after a full presentation of the merits of the said questions on the part of the petitioner and the respondent.

Wherefore, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein, entitled The

First National Bank of Chicago, Plaintiff in Error *versus* H. Drusilla Mitchell, Defendant in Error; to the end that the said case may be reviewed and determined by this Court as provided in Section 6 of the Act of Congress entitled "An Act to Establish Circuit Courts of Appeals and to Define and Regulate in Certain Cases the Jurisdiction of the Courts of the United States and for Other Purposes," approved March 3, 1891, or that your petitioner may have such other or further relief or remedy in the premises as to this Court may seem appropriate and in conformity with said Act, and that said judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court.

And your petitioners will ever pray, etc.

Dated this 24th day of April, 1899.

H. DRUSILLA MITCHELL,
By THEODORE M. MALTBIE,
Her Attorney.

THEODORE M. MALTBIE,
Of Counsel for Petitioner.

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } ss. HARTFORD, APRIL 24, 1899.

Theodore M. Maltbie, being duly sworn, says that he is one of the attorneys and of counsel for Mrs. H. Drusilla Mitchell, the petitioner named in the foregoing petition, and appeared for and represented her in the case mentioned in said petition in the Circuit Court of Appeals for the Second Circuit;

And also that he was attorney for Edward A. Freeman, trustee, named in the foregoing petition, and appeared for and represented him in the case mentioned in said petition, being his Appeal from Doings of Commissioners on Estate of H. Drusilla

Mitchell in the Superior Court and Supreme Court of Errors of the State of Connecticut; that he has read the said petition, and that the facts therein stated are true.

THEODORE M. MALTBIE,

Sworn and subscribed before me, the 24th day of April, 1899.

HUGH M. ALCORN,

[SEAL.] *Notary Public.*

Exhibit "A."

To all persons to whom these presents shall come,— GREETING:

Know ye, that I, George A. Conant, clerk of the County of Hartford, and of the Superior Court of the State of Connecticut within and for said county, having inspected the files and records in said Superior Court in my custody, do find there remaining on file a certain record in a cause known and entitled as "Edward A. Freeman, Trustee, Appeal from the Doings of Commissioners on Estate of H. Drusilla Mitchell, Insolvent Debtor," in the words and figures following, to wit:

GEORGE A. CONANT,

[SEAL.] *Clerk.*

STATE OF CONNECTICUT, }
HARTFORD COUNTY. } ss.

At a Court of Probate holden at Bristol, within and for the District of Bristol, on the 30th day of September, A.D. 1896:

Present, Elbert E. Thorpe, Esq., Judge.

Estate of H. Drusilla Mitchell, insolvent debtor.

Edward A. Freeman of Plainville, in said county, as trustee of the estate of H. Drusilla Mitchell aforesaid, appears in court within one month next after the report of the commissioners on said estate is returned into said Court of Probate and accepted, and moves for an appeal to the Superior Court at Hartford, within and for the county of Hartford, on the first Tuesday of October, 1896, from the doings of said Commissioners, in allowing a claim in favor of First National Bank of Chicago, State

of Illinois, and finding the same fully secured, which said claim exceeds the sum of seventy dollars, viz.: $28,070.30.

Said motion for an appeal is allowed and granted by this Court.

And the said Edward A. Freeman as principal, and Adrian J. Muzzy of Bristol, Conn., as surety, acknowledge themselves jointly and severally to be indebted and bound to the State of Connecticut in the sum of one hundred dollars, conditioned that said appellant shall prosecute said appeal to effect and answer all damages in case he make not his plea good.

And it is ordered by this Court that notice of said appeal and of this order be given to said First National Bank by leaving a true and attested copy of said appeal and order with the attorneys and representatives in this State, of said bank, or by mailing a like copy, postage paid, addressed to said First National Bank at Chicago, Ill., by the sheriff of the county of Hartford, his deputy, or by either of the constables of the town of Bristol, or by any indifferent person, at least five days before above return day of said Superior Court. And return make to said Court.

Certified from record,

ELBERT E. THORPE,
Judge.

HARTFORD, September 30, 1896.

Service of the foregoing appeal from commissioners is hereby accepted and further service of the same is waived, and it is agreed that the same may be entered upon the docket of the Superior Court and proceeded with in the same manner as if the order of notice herein had been complied with.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE,
Attorneys.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUILLA MITCHELL.	SUPERIOR COURT, HARTFORD COUNTY, November 10, 1896.

STATEMENT OF CLAIM.

1. The said H. Drusilla Mitchell, on the 20th day of February, 1891, executed and delivered to said First National Bank at Chicago an instrument in writing, of which a copy is hereto attached, marked Exhibit "A."

2. Thereafter, and relying upon said instrument, said bank extended credit to said Morse, Mitchell & Williams to the extent of $30,000, as evidenced by sundry notes, copies of which are hereto attached, marked respectively Exhibits "1," "2," "3," "4," "5," "6," "7," "8."

3. Said notes remain unpaid and are the property of said bank.

4. The amount of appellee's claim is $28,070.30, with interest thereon from the 17th day of June, 1896.

5. On June 17, 1896, and before the expiration of the time limited for the presentation of claims against said estate, the said claim was presented to said commissioners.

6. Said claim is secured by an assignment to said bank, from said Mitchell, of her interest in the estate of Elisha N. Welch, deceased.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE,
Its Attorneys.

HARTFORD, CONN., June 17, 1896.

Estate of H. Drusilla Mitchell,

E. A. Freeman, Trustee,

To the First National Bank of Chicago, Dr.

To amount of sundry notes guaranteed by H. Drusilla Mitchell (copies hereto attached), . .	$25,289.60
To interest on said notes from maturity of each to date, ...	4,738.34
	$30,027.94
Credit by sundry payments and interest thereon to date, ...	1,957.64
	$28,070.30

EXHIBIT 7.

$5,000.00 CHICAGO, April 1, 1893.

Four months after date we promise to pay to the order of The First National Bank of Chicago, Five Thousand Dollars at 100 State Street, Chicago, Ill. Value received.

F. E. MORSE & CO.

Indorsements:

Paid 5/29/95. $1,719.64. *Paid by Assignee.*

MORSE, MITCHELL & WILLIAMS.

EXHIBIT 1.

$3,000.00 CHICAGO, April 12, 1893.

Four months after date we promise to pay to the order of The First National Bank, Three Thousand Dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT 2.

$5,000.00 CHICAGO, April 17, 1893.

Four months after date we promise to pay to the order of The First National Bank, Five Thousand Dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT 3.

No. 87,773. $5,000.00

CHICAGO, ILL., May 16, 1893.

Four months after date we promise to pay to the order of The First National Bank of Chicago, Five Thousand Dollars with interest at seven per cent. per annum after due, at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

Payable at 34 and 36 Washington Street, Venetian Bldg.

EXHIBIT 4.

$2,500 CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of First National Bank, Twenty Five Hundred Dollars at 34 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

Indorsed, F. E. Morse & Son.

EXHIBIT 6.

$289.60 CHICAGO, June 8, 1893.

Three months after date I promise to pay to the order of

Morse, Mitchell & Williams, Two Hundred Eighty Nine 60/100 Dollars at 34 Washington Street. Value received. 7 per cent. from date.

ELIZABETH EWING.

Indorsements:

Paid 10/5/93, $50.

" 12/5/93, 5.

" 8/8/95, 50.

Paid 10/31/93, $10.00

" 5/ 5/94, 10.00

MORSE, MITCHELL & WILLIAMS.

EXHIBIT 8.

$3,500 CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of The First National Bank of Chicago, Thirty-five Hundred Dollars at The First National Bank. Value received.

F. E. MORSE & SON.

Indorsed, Morse, Mitchell & Williams.

EXHIBIT 5.

CHICAGO, ILL., June 30, 1893.

Ninety days after date we promise to pay to the order of The First National Bank of Chicago, One Thousand Dollars, with interest at seven per cent. per annum after due, at the office of said Bank. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "A."

We hereby request the First National Bank of Chicago to give and continue, to Morse, Mitchell & Williams, credit as they may desire from time to time, and in consideration of any and all

such credit given, we hereby guarantee any and all indebtedness now due, or which may hereafter become due, from them to said bank, to the extent of thirty thousand dollars, and waive notice of the acceptance of this guaranty, and of any and all indebtedness at any time covered by the same. This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by said The First National Bank of Chicago.

Chicago, Ill., February 20, 1891.

MORSE, MITCHELL & WILLIAMS,
FRANCIS E. MORSE,
FREDERICK C. WILLIAMS,
G. H. MITCHELL,
H. DRUSILLA MITCHELL.

Filed November 10, 1896.

GEORGE A. CONANT,
Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUSILLA MITCHELL. } HARTFORD COUNTY, SUPERIOR COURT, November 11, 1896.

ANSWER TO CLAIM OF FIRST NATIONAL BANK OF CHICAGO.

1. Paragraph 1 is denied. Said writing, Exhibit "A," was prepared by said bank at said Chicago and there signed by the members of the copartnership of Morse, Mitchell & Williams; and, thereafter, pursuant to an agreement between said bank and said copartnership, said writing was taken by their agent to the domicil of said H. Drusilla Mitchell, at Bristol, in this State, who, being solicited so to do, there signed said writing,

and then and there delivered the same to the agent of said bank and copartnership, who transmitted it, by mail, to said Chicago.

2. Said H. Drusilla Mitchell, at the time of signing said writing, was a married woman, the wife of George H. Mitchell of said Bristol, to whom she was married in 1857, at said Bristol, where she then, and ever since has, resided.

3. At the date of said writing, said Morse, Mitchell & Williams was indebted and otherwise liable to said bank in a large sum, to wit: $25,000 and more; and said bank did not, thereafter, give other or further credit to said copartnership. Paragraph 2 is denied.

4. The appellant has not sufficient information to form a belief as to paragraph 3. Paragraphs 4 and 6 are denied, and paragraph 5 is admitted.

EDWARD A. FREEMAN, TRUSTEE,
By T. M. MALTBIE,
His Attorney.

Filed November 13, 1896,
GEORGE A. CONANT,
Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUSILLA MITCHELL. } HARTFORD COUNTY, SUPERIOR COURT, December 15, 1896.

REPLY OF FIRST NATIONAL BANK OF CHICAGO TO DEFENDANT'S ANSWER.

1. Paragraph 2 is admitted.

2. All other allegations of fact in said answer are denied.

FIRST NATIONAL BANK OF CHICAGO,

By CASE, BRYANT & CASE,

Its Attorneys.

Filed December 16, 1896.

GEORGE A. CONANT,

Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS, ESTATE OF H. DRUSILLA MITCHELL, INSOLVENT DEBTOR.	SUPERIOR COURT, HARTFORD COUNTY, December 16, 1896.

RESERVATION.

In the above case all the parties consent that the same may be reserved for the advice of the Supreme Court of Errors as to the judgment to be therein rendered, and request this Court to so reserve said case upon the issues joined and the agreed facts.

FIRST NATIONAL BANK OF CHICAGO,

By CASE, BRYANT & CASE,

Attorneys.

Edward A. Freeman, Trustee,

By T. M. MALTBIE,

Attorney.

Filed December 16, 1896.

GEORGE A. CONANT,

Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS, ESTATE OF H. DRUSILLA MITCHELL, INSOLVENT DEBTOR.	SUPERIOR COURT, HARTFORD COUNTY, December 17, 1896.

FINDING OF FACTS.

1. The appellant is trustee of the assigned estate of said H. Drusilla Mitchell, duly appointed and qualified in the Court of Probate for the District of Bristol.

2. Said bank is organized under the laws of the United States and engaged in the business of banking at Chicago, in the State of Illinois.

3. Said H. Drusilla Mitchell was born and has always resided in Bristol, State of Connecticut. She was married there in 1857, to George H. Mitchell, and, with her said husband, established a home at Forestville, in said Bristol, where they resided until his death, which occurred March 6, 1896, and where she now resides.

4. Said George H. Mitchell was a member of the firm of Morse, Mitchell & Williams, a copartnership located at said Chicago, engaged in mercantile and real estate business. The other members of said firm were Francis E. Morse and Frederick C. Williams, both of said Chicago.

5. Said Morse, Mitchell & Williams kept an account and did business with said First National Bank; and on the 20th day of February, 1891, were largely indebted to said bank, viz.: in the sum of twenty thousand dollars ($20,000.00) or more, as evidenced by their notes payable to said bank, which have been renewed, in part, from time to time, as stated in paragraph 9.

6. On said February 20, 1891, said firm, and said Morse, Williams, and George H. Mitchell executed to said bank, at Chicago, the paper, a copy of which is hereto annexed, marked "A." Said paper was prepared by said bank which had agreed with said firm to continue the line of credits to it upon the execution of said paper by said firm and its individual members and by Mrs. H. Drusilla Mitchell, then at her home in said Bristol.

7. Said George H. Mitchell thereupon took said paper and brought it with him to his residence at said Forestville, and there procured his said wife, H. Drusilla Mitchell, to sign the same, and the same was thereafter by him enclosed, addressed, and sent by mail, to said Morse in Chicago, who delivered said paper to said bank.

8. Said bank continued to extend credit to said Morse, Mitchell & Williams until said firm became insolvent and made an assignment for the benefit of its creditors on July 30, 1893.

9. At the time of such insolvency and assignment, said bank held and owned the notes of said Morse, Mitchell & Williams, renewals of unpaid portions of said first mentioned notes for the sum of sixteen thousand, five hundred dollars ($16,500.00), copies of which renewal notes, marked respectively "1," "2," "3," "4," "5," are hereto attached. Also note made by Elizabeth Ewing, two hundred, eighty-nine dollars, and sixty cents ($289.60), endorsed by Morse, Mitchell & Williams, copy attached, marked "6." All the above notes are still owned by said bank and are unpaid.

10. Said bank also held and owned notes made by F. E. Morse & Son, another business firm of said Chicago, said F. E. Morse being the above-named Francis E. Morse, for the sum of eighty-five hundred dollars ($8,500.00), which notes were endorsed by said Morse, Mitchell & Williams and discounted for

the benefit of said Morse & Son by said bank, copies of said notes, marked "7" and "8," are hereto attached. Said F. E. Morse & Son became insolvent and made an assignment for the benefit of their creditors, and said notes were presented as a claim against the estate of said F. E. Morse & Son; and on May 27, 1895, said bank was paid seventeen hundred, nineteen dollars and sixty-four cents ($1,719.64), as a dividend upon said notes. No further payment has been made on said notes. Notice of non-payment of said notes was not given to said endorsers unless constructive notice may be found upon the foregoing facts.

11. Said bank, December 26, 1893, prepared the letter addressed to J. H. Welch, Esq., executor of the will of E. N. Welch, deceased, copy of which is annexed hereto, marked "B," which letter was sent to said George H. Mitchell at Forestville, Conn., by said bank, to procure the signature of his wife, said H. Drusilla Mitchell, thereto. Said George H. Mitchell procured said H. Drusilla Mitchell to sign said letter at her home in said Bristol and transmitted the same, by mail, to said bank at Chicago on January 23, 1894. Said H. Drusilla Mitchell executed no other paper or assignment to said bank of her interest in the estate of E. N. Welch, deceased. Upon the receipt of said letter by said bank, said bank executed and transmitted to George H. Mitchell, by mail, the receipt, copy of which is attached, marked "C"; but the same was never delivered by said George H. Mitchell to said H. Drusilla Mitchell, or its existence made known to her until after his death.

12. The printed statutes, and the decisions of courts of last resort, of the State of Illinois, are referred to and made a part hereof as showing the existing law of said State at the time of said several transactions.

13. Said claim was duly presented to the commissioners on the insolvent estate of said H. Drusilla Mitchell and by them allowed at the sum of $28,070.30, and the security therefor was by them found to be equal in value to said amount.

Upon the foregoing facts, by consent of all the parties to the record, said appeal is reserved for the advice of the Supreme Court of Errors next to be held at Hartford, in the First Judicial District, on the first Tuesday in January, 1897.

GEORGE W. WHEELER,
Judge.

EXHIBIT "A."

We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they may desire from time to time, and in consideration of all and any such credit given we hereby guarantee any and all indebtedness now due, or which may hereafter become due, from them to said bank, to the extent of thirty thousand dollars, and waive notice of the acceptance of this guaranty and of any and all indebtedness at any time covered by the same. This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by said The First National Bank of Chicago.

MORSE, MITCHELL & WILLIAMS,
FRANCIS E. MORSE,
FREDERICK C. WILLIAMS,
G. H. MITCHELL,
H. DRUSILLA MITCHELL.

Chicago, Ill., February 20, 1891.

EXHIBIT "1."

$3,000 CHICAGO, April 12, 1893.

Four months after date we promise to pay to the order of the First National Bank, three thousand dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "2."

$5,000. CHICAGO, April 17, 1893.

Four months after date we promise to pay to the order of the First National Bank, five thousand dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "3."

No. 87,773.

$5,000. CHICAGO, ILL., May 16, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago, five thousand dollars, with interest at seven per cent. per annum after due at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

Payable at 34 and 36 Washington Street, Venetian Bldg.

EXHIBIT "4."

$2,500. CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of First National Bank, twenty-five hundred dollars at 34 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

Indorsed, F. E. Morse & Son.

EXHIBIT "5."

No. 92,099.

$1,000. CHICAGO, ILL., June 30, 1893.

Ninety days after date we promise to pay to the order of the First National Bank of Chicago, one thousand dollars, with

interest at seven per cent. per annum after due, at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "6."

$289.60. CHICAGO, June 8, 1893.

Three months after date I promise to pay to the order of Morse, Mitchell & Williams, two hundred, eighty-nine dollars, and sixty cents at 34 Washington Street. Value received. Seven per cent. from date.

ELIZABETH EWING.

Indorsed, Paid 10/ 5/93, $50.00
" 10/31/93, 10.00
" 12/ 5/93, 5.00
" 5/ 5/94, 10.00
" 8/ 8/95, 50.00

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "7."

$5,000. CHICAGO, April 1, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago, five thousand dollars at 100 State Street, Chicago, Ill. Value received.

F. E. MORSE & SON.

Indorsed, Paid 5/27/95, $1,719.64. Paid by assignee.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "S."

$3,500. CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago, thirty-five hundred dollars at the First National Bank. Value received.

F. E. MORSE & SON.

Indorsed, Morse, Mitchell & Williams.

EXHIBIT "B."

CHICAGO, ILL., December 26, 1893.

J. H. WELCH, Esq.,
Executor of the will of E. N. Welch, deceased,
Forestville, Conn.

DEAR SIR: — I desire to notify you that I have assigned, set over, and transferred to the First National Bank of Chicago, Ill., all my right, title, and interest in and to so much of the estate of my late father, E. N. Welch, deceased, as has not been distributed, and you will, therefore, account for and pay over to said First National Bank of Chicago, instead of to me, all money and other property coming to me or to which I may be entitled, at any time hereafter, from said estate of my deceased father.

Please note at the foot hereof, for the satisfaction and security of said bank, that you will undertake to do this, and in case you should cease to be executor of the estate, otherwise than by death, you would promptly give notice of the fact to said bank, in order that it might give express notice of this assignment to your successor in the trust.

Yours truly,

H. DRUSILLA MITCHELL.

I take notice of the foregoing and will comply therewith.

J. H. WELCH,
Executor.

EXHIBIT "G."

December 26, 1893.

Received of H. Drusilla Mitchell an assignment of all her right, title, and interest in the undistributed estate of her late father, E. N. Welch, deceased, the same being so received in pledge to secure the payment of her indebtedness to the undersigned, its successors or assigns, upon her guaranty of certain notes made or endorsed by Morse, Mitchell & Williams of Chicago, amounting to $26,000, more or less.

In consideration of security pledged as aforesaid, the undersigned undertakes and promises to surrender and reassign the same, or so much thereof as shall not have been applied on said indebtedness, at any time on demand after payment in full of the indebtedness aforesaid, and not to enforce or demand payment of said indebtedness from said H. Drusilla Mitchell, her heirs, executors, or administrators prior to January 1, 1895, except from the interest or property assigned as security aforesaid.

THE FIRST NATIONAL BANK OF CHICAGO,
By L. J. Gage, *Pl.*

Filed and granted December 17, 1896.
George A. Conant,
Assistant Clerk.

Edward A. Freeman, Trustee, Appeal from Doings of Commissioners, Estate of H. Drusilla Mitchell.	Superior Court, Hartford County, December 17, 1896.

RESERVATION.

The above-entitled case, by consent and at the request of all the parties to the record, is reserved for the advice of the Supreme Court of Errors upon the issues joined and facts agreed and stipulated by the parties.

GEORGE W. WHEELER,
Judge.

Edward A. Freeman, Trustee, Appeal from Doings of Commissioners on Estate of H. Drusilla Mitchell.

(Argued January 13th — Decided February 23, 1897.)

Baldwin, *J.* Mrs. Mitchell, being a citizen of Connecticut, married a citizen of Connecticut in 1857, and they continued to reside in this State until his death. Her marriage gave her, under the laws of the State then in force, substantially the *status* which belonged to a married woman at common law. Her personal identity from a judicial point of view was merged in that of her husband. Thereafter, during coverture, she could make no contract that would be binding upon her, even by his express authority. 1 Swift's Dig., 30. If she assumed to make such a contract, it was absolutely void.

These personal disabilities the common law imposed partly for the protection of the husband, and partly for that of the wife. To preserve what property rights remained to her, as far as might be, against his creditors, various statutes were from time to time enacted, until this long ago became recognized as the established policy of the State. Jackson v. Hubbard, 36 Conn., 10, 15. These statutes were mainly designed to protect her against others. The common law was sufficient to protect her against herself, and prior to 1877 it precluded her from making any contract as surety for her husband. Kilbourn v. Brown, 56 Conn., 149. A statute of that year establishes a different rule for women married after its enactment, but does not enlarge the rights of those previously married. General Statutes, Sec. 2796.

Whenever a peculiar *status* is assigned by law to the members of any particular class of persons, affecting their general position in or with regard to the rest of the community, no one belonging to such class can vary by any contract the rights and liabilities incident to this *status*. Anson's Principles of Contract, 328. If he could, his private agreements would outweigh the law of the land. *Jus publicum privatorum pactis mutari non potest.*

Coverture constitutes such a *status*, and one of its incidents in this State, at the time of Mrs. Mitchell's marriage, was a total disability to contract. So far as contracts of suretyship for their husbands are concerned, the disability of women married before 1877 remains absolute, unless both husband and wife have executed for public record a written contract, by which both accede to the provisions of the statute of that year and accept the rights which it offers to them. General Statutes, Sec. 2798. No such contract was ever executed by Mrs. Mitchell.

The claim in favor of the First National Bank of Chicago which has been allowed by the commissioners on her estate was founded on a debt due from a mercantile firm in Illinois, of which her husband was a member, for which she had assumed to make herself responsible, as guarantor, by a writing dated in Illinois, but signed in this State. The creditor had agreed, in Illinois, with the firm to forbear suit if she and they (as a firm and individually) would become parties to such a paper; and, after they had signed it there, had given it to her husband, in Illinois, to take to her, in this State, for execution. He procured her signature, and then mailed the instrument to one of his partners at Chicago, by whom it was there delivered to the bank. The agreement of forbearance had been conditioned on the execution of the guaranty by the firm, its individual members, and Mrs. Mitchell. It was her credit only that was to give it value. Its execution by the others gave the bank nothing which it did not have, as fully, before. It did not become complete until it received her signature. It did not then become operative as a security until it had been delivered to the creditor.

Her husband cannot be deemed to have acted, in procuring Mrs. Mitchell's signature, as the agent of the bank. No finding to that effect was made by the trial court, and no such agency is implied from the circumstances of the transaction. He had a direct interest in obtaining the desired extension of credit. He was a principal in the obligation. He sent the paper, as soon as

it was completed, not to the bank, but to another of the principals. If he represented anyone but himself, it was his copartner. The delivery of the paper by his wife to him, therefore, after her signature had been attached, was not a delivery to the bank, but simply purported to give him authority as her agent to make or procure such a delivery at some subsequent time.

If, therefore, the guaranty, so far as concerns her obligation upon it, was ever delivered, it was delivered, and so first took effect in Chicago. But its delivery there could not affect her, unless it was made by her or by her authorized agent. Morse, the partner who actually handed it to the bank, stood in no better position than her husband, whether regarded as the servant of the latter, or as a partner with him. In either case, the agency, by virtue of which the delivery was made, was created, if at all, in Connecticut.

But to create an agency is to enter into a contractual relation. Mrs. Mitchell had no capacity to make any contract whereby her legal position in respect to all or any of the other members of the community would be varied. It would have varied it in respect to her husband, could she have constituted him her agent to put her, by delivery of an instrument of guaranty, in the situation of a surety for his debt to a third party. He therefore derived no authority from her to make the delivery to the bank, and, as to her, the instrument never was delivered.

It is true that the guaranty, if a binding contract, was a contract made in Illinois. It might also be assumed, so far as concerns the law of this case (although this is a point as to which we express no opinion), that it was one to be performed in Illinois, and that as to the principals in the transaction it was fully an Illinois contract, and to be governed by the law of Illinois, as respects any question as to its validity. By that law a married woman was free to enter into such an engagement, and to consti-

tute an agent for that purpose. But the *lex loci contractus* is a rule of decision only when there is a contract, so made as to be subject to that law. It is a *petitio principii* to say that because the guaranty was delivered in Chicago it is therefore to be held effectual or ineffectual, as against Mrs. Mitchell, by the law of that place. The underlying question is, was it, as to her, ever delivered at all? It was not so delivered unless delivered by her authority; and by the laws of Connecticut, where she assumed to give such authority, she could not give it. Cooper v. Cooper, L. R., 13 App., Cases 88, 99, 100; Story on the Conflict of Laws, Secs. 64, 65, 66a, 136; Dicey on the Conflict of Laws, Chap. XVIII, rule 123.

Had Mrs. Mitchell been within the State of Illinois when she signed the guaranty it may be that her personal presence would have so far made her a resident of that State as to subject her to its laws, in respect to acts done within its jurisdiction. But as whatever was done in Illinois to bind her to the bank was done under an agency constituted in Connecticut, it is the law of Connecticut which must determine as to the authority of the agent, and so as to the validity of the obligation which he, as such, undertook to impose upon her by the delivery in Chicago of the paper signed by her in Bristol.

The order drawn by Mrs. Mitchell on the executor of her father's will, directing him to pay over to the bank whatever might otherwise be coming to her as a part of the estate in his hands, though dated at Chicago, was brought to her in behalf of the bank in Connecticut, signed and given back to the agent of the bank in Connecticut, accepted by the executor in Connecticut, and then mailed in Connecticut by its agent to the bank at Chicago. The whole transaction, therefore, was completed here. The order became operative, if at all, to transfer her interest in her father's estate, when the executor had notice of it, and agreed to comply with it by handing his written acceptance to the agent of the bank. That Mr. Mitchell was acting in that capacity

seems clear from the finding that the bank, after the firm had become insolvent and made an assignment for the benefit of its creditors, prepared the paper and sent it to him, to procure her signature to it. No assignment which she could make would benefit the firm. If its result was to satisfy the claim of the bank, she would be subrogated to its place, and their creditors would receive no greater dividend. The order, also, was for the payment of a share in the estate of a deceased citizen of Connecticut, in the course of settlement in its courts. Under these circumstances, its validity must be determined by the laws of Connecticut, and being dependent on the contractual act of a married woman, not for the benefit of herself, her family, or her estate, it was void.

There have been cases not differing essentially in principle from that at bar, in which courts, to whose opinions great consideration is due, have come to conclusions varying from those which we have reached. The leading one is Miliken v. Pratt, 125 Mass., 374. There a guaranty by a married woman of such debts as her husband might thereafter contract was signed in Massachusetts, delivered there by her to him, and by him there mailed to the other party in Maine. The Court held that the contract became complete when the guaranty was received and acted upon by the latter, and not before; and enforced it as one made and to be performed in Maine, where married women then had power to enter into such agreements. No reference was made to the fact (which may, perhaps, have been immaterial under the laws of Massachusetts) that the delivery was made by the husband, acting as the agent of the wife,— a fact which, in our view, under the common law of Connecticut, is of controlling importance.

Engagements which coverture prevents a woman from making herself she cannot make through the interposition of an agent, whom she assumes to constitute as such in the State of her domicil. If this were not so, the law could always be evaded

by her appointment of an attorney to act for her in the execution of contracts. No principle of comity can require a State to lend the aid of its courts to enforce a security which rests on a transgression of its own laws by one of its own citizens, committed within its own territory. Such was, in effect, the act by which Mrs. Mitchell undertook to do what she had no legal capacity to do, by making her husband the agent to deliver the guaranty to the bank. He had no more power to make it operative by delivery in Chicago to one of his creditors in Illinois than he would have had to make it operative here had it been drawn in favor of one of his creditors in Connecticut. It is not the place of delivery that controls, but the power of delivery.

The Superior Court is advised to disallow all and every part of the claim of the First National Bank.

In this opinion the other judges concurred.

8521.

EDWARD A. FREEMAN, Trustee,
Appeal from Doings of Commissioners on Estate of
H. DRUSILLA MITCHELL.
Opinion of Supreme Court
of Errors.

Filed February 25, 1897.

GEORGE A. CONANT,
Assistant Clerk.

At a Superior Court holden at Hartford, in and for the County of Hartford, in the State of Connecticut, on the second Tues-

day of October, in the year of our Lord one thousand eight hundred and ninety-six:

Present, Hon. Frederic B. Hall, Judge.

8521.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS, ON ESTATE OF H. DRUSILLA MITCHELL AN INSOLVENT DEBTOR.	HARTFORD COUNTY, SUPERIOR COURT, March 2, 1897.

JUDGMENT.

This appeal from the doings of the commissioners on the estate of H. Drusilla Mitchell, an insolvent debtor, in allowing the claims of the First National Bank of Chicago against said estate for $28,070.30, and finding that the same was fully secured, came to this court on the first Tuesday of October, 1896, when the parties appeared and were at issue to the court, as on file.

This Court heard the parties, and with their consent, in writing, reserved said appeal for the advice of the Supreme Court of Errors as to the judgment to be rendered.

The Supreme Court of Errors advised this Court to disallow all the claims of said First National Bank of Chicago against said estate.

Whereupon it is adjudged that all the claims of said First National Bank of Chicago against said estate of H. Drusilla Mitchell, insolvent debtor, be and the same are, disallowed; and that the said appellant, Edward A. Freeman, trustee, recover from said First National Bank of Chicago his costs, taxed and allowed at eighty-six dollars.

By the Court,

GEORGE A. CONANT,
Assistant Clerk.

All of which I have caused by these presents to be exemplified and the seal of the Superior Court of the State of Connecticut in and for the County of Hartford to be hereunto affixed, and do hereby certify that the within and foregoing is a true copy of said original files and record.

In testimony whereof I hereunto set my hand and affix the seal of said Superior Court, at Hartford, in said county and State, this sixteenth day of March, A.D. 1899.

GEORGE A. CONANT,

Clerk of the Superior Court of the State of Connecticut in and for the County of Hartford.

[SEAL.]

STATE OF CONNECTICUT, } ss.
COUNTY OF HARTFORD, }

I, John M. Thayer, a Judge of the Superior Court of the State of Connecticut, do hereby certify that George A. Conant, whose name is subscribed to the foregoing exemplification, is the Clerk of said Superior Court in and for said Hartford County, duly appointed and sworn, that the above is his genuine official signature, and that full faith and credit are due to his official act. I further certify that the seal affixed to said exemplification is the seal of the Superior Court of said State in and for said Hartford County, and that the foregoing attestation is in due form.

Dated at Hartford, this 16th day of March, A.D. 1899.

JOHN M. THAYER,
A Judge of the Superior Court of the State of Connecticut.

Exhibit "B."

To all persons to whom these presents shall come,— GREETING:

Know Ye, That I, George A. Conant, Clerk of the Supreme Court of Errors of the State of Connecticut, First Judicial District, in and for the County of Hartford in said State, having inspected the files and records in said court in my custody, do find there remaining on file a certain record in a cause known and entitled as "Edward A. Freeman, Trustee, Appeal from the Doings of Commissioners on Estate of H. Drusilla Mitchell, Insolvent Debtor," in the words and figures following, to wit:

GEORGE A. CONANT,
Clerk of the Supreme Court of Errors for the
[SEAL.] First Judicial District, County of Hartford,
State of Connecticut.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUSILLA MITCHELL, INSOLVENT DEBTOR. } SUPREME COURT OF ERRORS, FIRST JUDICIAL DISTRICT, January Term, 1897. RESERVATION.

SUPERIOR COURT, HARTFORD COUNTY.

First Tuesday of October, 1896.

STATE OF CONNECTICUT, HARTFORD COUNTY. } ss.

At a Court of Probate holden at Bristol, within and for the Dis-

trict of Bristol, on the 30th day of September, A.D. 1896:

Present, Elbert E. Thorpe, Esq., Judge.

Estate of H. Drusilla Mitchell, insolvent debtor.

Edward A. Freeman of Plainville, in said county, as trustee of the estate of H. Drusilla Mitchell aforesaid, appears in court within one month next after the report of the commissioners on said estate is returned into said Court of Probate, and accepted and moves for an appeal to the Superior Court at Hartford, within and for the county of Hartford, on the first Tuesday of October, 1896, from the doings of said commissioners, in allowing a claim in favor of First National Bank of Chicago, State of Illinois, and finding the same fully secured, which said claim exceeds the sum of seventy dollars, viz.: $28,070.30.

Said motion for an appeal is allowed and granted by this Court.

And the said Edward A. Freeman as principal, and Adrian J. Muzzy of Bristol, Conn., as surety, acknowledge themselves jointly and severally to be indebted and bound to the State of Connecticut in the sum of one hundred dollars, conditioned that said appellant shall prosecute said appeal to effect and answer all damages in case he make not his plea good.

And it is ordered by this Court that notice of said appeal and of this order be given to said First National Bank by leaving a true and attested copy of said appeal and order with the attorneys and representatives in this State, of said bank, or by mailing a like copy, postage paid, addressed to said First National Bank at Chicago, Ill., by the sheriff of the county of Hartford, his deputy, or by either of the constables of the town of Bristol, or by any indifferent person, at least five days before above return day of said Superior Court. And return make to said Court.

Certified from record,

ELBERT E. THORPE,

Judge.

Hartford, September 30, 1896.

Service of the foregoing appeal from commissioners is hereby accepted and further service of the same is waived, and it is agreed that the same may be entered upon the docket of the Superior Court and proceeded with in the same manner as if the order of notice herein had been complied with.

FIRST NATIONAL BANK OF CHICAGO,

By CASE, BRYANT & CASE,
Attorneys.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUSILLA MITCHELL.

SUPERIOR COURT, HARTFORD COUNTY, November, 10, 1896.

STATEMENT OF CLAIM.

1. The said H. Drusilla Mitchell, on the 20th day of February, 1891, executed and delivered to said First National Bank at Chicago an instrument in writing, of which a copy is hereto attached, marked Exhibit "A."

2. Thereafter, and relying upon said instrument, said bank extended credit to said Morse, Mitchell & Williams to the extent of $30,000, as evidenced by sundry notes, copies of which are hereto attached, marked respectively Exhibits "1," "2," "3," "4," "5," "6," "7," "8."

3. Said notes remain unpaid and are the property of said bank.

4. The amount of appellee's claim is $28,070.30, with interest thereon from the 17th day of June, 1896.

5. On June 17, 1896, and before the expiration of the time

limited for the presentation of claims against said estate, the said claim was presented to said commissioners.

6. Said claim is secured by an assignment to said bank, from said Mitchell, of her interest in the estate of Elisha N. Welch, deceased.

FIRST NATIONAL BANK OF CHICAGO,

By CASE, BRYANT & CASE,

Its Attorneys.

HARTFORD, CONN., June 17, 1896.

Estate of H. Drusilla Mitchell,

E. A. Freeman, Trustee, &

To the First National Bank of Chicago, Dr.

To amount of sundry notes guaranteed by H. Drusilla Mitchell (copies hereto attached), . .	$25,289.60
To interest on said notes from maturity of each to date, ...	4,738.34
	$30,027.94
Credit by sundry payments and interest thereon to date, ...	1,957.64
	$28,070.30

Exhibits "1," "2," "3," "4," "5," "6," "7," and "8" annexed to Statement of Claim, are identical with Exhibits "1," "2," "3," "4," "5," "6," "7," and "8" annexed to Finding, page 6, of this record.

EXHIBIT "A."

We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they

may desire from time to time, and in consideration of any and all such credit given, we hereby guarantee any and all indebtedness now due, or which may hereafter become due, from them to said bank, to the extent of thirty thousand dollars, and waive notice of the acceptance of this guaranty, and of any and all indebtedness at any time covered by the same. This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by said The First National Bank of Chicago.

Chicago, Ill., February 20, 1891.

MORSE, MITCHELL & WILLIAMS,
FRANCIS E. MORSE,
FREDERICK C. WILLIAMS,
G. H. MITCHELL,
H. DRUSILLA MITCHELL.

Filed November 10, 1896.

GEORGE A. CONANT,
Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUSILLA MITCHELL.

HARTFORD COUNTY, SUPERIOR COURT, November 11, 1896.

ANSWER TO CLAIM OF FIRST NATIONAL BANK OF CHICAGO.

1. Paragraph 1 is denied. Said writing, Exhibit "A," was prepared by said bank at said Chicago and there signed by the members of the copartnership of Morse, Mitchell & Williams; and, thereafter, pursuant to an agreement between said bank and said copartnership, said writing was taken by their agent to the domicil of said H. Drusilla Mitchell, at Bristol, in this State, who,

being solicited so to do, there signed said writing, and then and there delivered the same to the agent of said bank and copartnership, who transmitted it, by mail, to said Chicago.

2. Said H. Drusilla Mitchell, at the time of signing said writing, was a married woman, the wife of George H. Mitchell of said Bristol, to whom she was married in 1857, at said Bristol, where she then, and ever since has, resided.

3. At the date of said writing, said Morse, Mitchell & Williams was indebted and otherwise liable to said bank in a large sum, to wit: $25,000.00 and more; and said bank did not, thereafter, give other or further credit to said copartnership. Paragraph 2 is denied.

4. The appellant has not sufficient information to form a belief as to paragraph 3. Paragraphs 4 and 6 are denied, and paragraph 5 is admitted.

EDWARD A. FREEMAN, TRUSTEE,
By T. M. MALTBIE,
His Attorney.

Filed November 13, 1896.
GEORGE A. CONANT,
Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUSILLA MITCHELL.

HARTFORD COUNTY, SUPERIOR COURT, December 15, 1896.

REPLY OF FIRST NATIONAL BANK OF CHICAGO TO DEFENDANT'S ANSWER.

1. Paragraph 2 is admitted.

2. All other allegations of fact in said answer are denied.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE,
Its Attorneys.

Filed December 16, 1896.
GEORGE A. CONANT,
Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS, ESTATE OF H. DRUSILLA MITCHELL, INSOLVENT DEBTOR.	SUPERIOR COURT, HARTFORD COUNTY, December 16, 1896.

RESERVATION.

In the above case all the parties consent that the same may be reserved for the advice of the Supreme Court of Errors as to the judgment to be therein rendered, and request this Court to so reserve said case upon the issues joined and the agreed facts.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE,
Attorneys.

EDWARD A. FREEMAN, Trustee,
By T. M. MALTBIE,
Attorney.

Filed December 16, 1896.
GEORGE A. CONANT,
Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS, ESTATE OF H. DRUSILLA MITCHELL, INSOLVENT DEBTOR.	SUPERIOR COURT, HARTFORD COUNTY, December 17, 1896.

FINDING OF FACTS.

1. The appellant is trustee of the assigned estate of said H. Drusilla Mitchell, duly appointed and qualified in the Court of Probate for the District of Bristol.

2. Said bank is organized under the laws of the United States and engaged in the business of banking at Chicago, in the State of Illinois.

3. Said H. Drusilla Mitchell was born and has always resided in Bristol, State of Connecticut. She was married there in 1857, to George H. Mitchell, and, with her said husband, established a home at Forestville, in said Bristol, where they resided until his death, which occurred March 6, 1896, and where she now resides.

4. Said George H. Mitchell was a member of the firm of Morse, Mitchell & Williams, a copartnership located at said Chicago, engaged in mercantile and real estate business. The other members of said firm were Francis E. Morse and Frederick C. Williams, both of said Chicago.

5. Said Morse, Mitchell & Williams kept an account and did business with said First National Bank; and on the 20th day of February, 1891, were largely indebted to said bank, viz.: in the sum of twenty thousand dollars ($20,000.00) or more, as evidenced by their notes payable to said bank, which have been renewed, in part, from time to time, as stated in paragraph 9.

6. On said February 20, 1891, said firm, and said Morse, Williams, and George H. Mitchell executed to said bank, at Chicago, the paper, a copy of which is hereto annexed, marked "A." Said paper was prepared by said bank which had agreed with said firm to continue the line of credits to it upon the execution of said paper by said firm and its individual members, and by Mrs. H. Drusilla Mitchell, then at her home in said Bristol.

7. Said George H. Mitchell thereupon took said paper and brought it with him to his residence at said Forestville, and there procured his said wife, H. Drusilla Mitchell, to sign the same, and the same was thereafter by him enclosed, addressed, and sent by mail to said Morse in Chicago, who delivered said paper to said bank.

8. Said bank continued to extend credit to said Morse, Mitchell & Williams until said firm became insolvent and made an assignment for the benefit of its creditors on July 30, 1893.

9. At the time of such insolvency and assignment, said bank held and owned the notes of said Morse, Mitchell & Williams, renewals of unpaid portions of said first mentioned notes for the sum of sixteen thousand, five hundred dollars ($16,500.00), copies of which renewal notes, marked respectively "1," "2," "3," "4," "5," are hereto attached. Also note made by Elizabeth Ewing, two hundred, eighty-nine dollars, and sixty cents ($289.60), endorsed by Morse, Mitchell & Williams, copy attached, marked "6." All the above notes are still owned by said bank and are unpaid.

10. Said bank also held and owned notes made by F. E. Morse & Son, another business firm of said Chicago, said F. E. Morse being the above-named Francis E. Morse, for the sum of eighty-five hundred dollars ($8,500.00), which notes were endorsed by said Morse, Mitchell & Williams and discounted for the benefit of said Morse & Son by said bank, copies of said notes

marked "7" and "8" are hereto attached. Said F. E. Morse & Son became insolvent and made an assignment for the benefit of their creditors, and said notes were presented as a claim against the estate of said F. E. Morse & Son; and on May 27, 1895, said bank was paid seventeen hundred, nineteen dollars and sixty-four cents ($1,719.64), as a dividend upon said notes. No further payment has been made on said notes. Notice of non-payment of said notes was not given to said endorsers unless constructive notice may be found upon the foregoing facts.

11. Said bank, December 26, 1893, prepared the letter addressed to J. H. Welch, Esq., executor of the will of E. N. Welch, deceased, copy of which is annexed hereto marked "B," which letter was sent to said George H. Mitchell at Forestville, Conn., by said bank, to procure the signature of his wife, said H. Drusilla Mitchell, thereto. Said George H. Mitchell procured said H. Drusilla Mitchell to sign said letter at her home in said Bristol and transmitted the same, by mail, to said bank at Chicago on January 23, 1894. Said H. Drusilla Mitchell executed no other paper or assignment to said bank of her interest in the estate of E. N. Welch, deceased. Upon the receipt of said letter by said bank, said bank executed and transmitted to George H. Mitchell, by mail, the receipt, copy of which is attached, marked "C"; but the same was never delivered by said George H. Mitchell to said H. Drusilla Mitchell, or its existence made known to her until after his death.

12. The printed statutes, and the decisions of courts of last resort, of the State of Illinois, are referred to and made a part hereof as showing the existing law of said State at the time of said several transactions.

13. Said claim was duly presented to the commissioners on the insolvent estate of said H. Drusilla Mitchell and by them allowed at the sum of $28,070.30, and the security therefor was by them found to be equal in value to said amount.

Upon the foregoing facts, by consent of all the parties to the record, said appeal is reserved for the advice of the Supreme Court of Errors next to be held at Hartford, in the First Judicial District, on the first Tuesday in January, 1897.

GEORGE W. WHEELER,
Judge.

EXHIBIT "A."

We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they may desire from time to time, and in consideration of all and any such credit given we hereby guarantee any and all indebtedness now due, or which may hereafter become due, from them to said bank, to the extent of thirty thousand dollars, and waive notice of the acceptance of this guaranty and of any and all indebtedness at any time covered by the same. This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by said The First National Bank of Chicago.

MORSE, MITCHELL & WILLIAMS,
FRANCIS E. MORSE,
FREDERICK C. WILLIAMS,
G. H. MITCHELL,
H. DRUSILLA MITCHELL.

CHICAGO, ILL., February 20, 1891.

EXHIBIT "1."

$3,000. CHICAGO, ILL., April 12, 1893.

Four months after date we promise to pay to the order of the First National Bank three thousand dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "2."

$5.000. CHICAGO, ILL., April 17, 1893.

Four months after date we promise to pay to the order of the First National Bank five thousand dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "3."

No. 87,773.

$5,000. CHICAGO, ILL., May 16, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago five thousand dollars, with interest at seven per cent. per annum after due at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

Payable at 34 and 36 Washington Street, Venetian Bldg.

EXHIBIT "4."

$2,500. CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of First National Bank twenty-five hundred dollars at 34 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

Indorsed, F. E. Morse & Son.

EXHIBIT "5."

No. 92,099.

$1,000. CHICAGO, ILL., June 30, 1893.

Ninety days after date we promise to pay to the order of the First National Bank of Chicago one thousand dollars, with in-

terest at seven per cent. per annum after due, at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "6."

$289.60. CHICAGO, June 8, 1893.

Three months after date I promise to pay to the order of Morse, Mitchell & Williams two hundred eighty-nine dollars and sixty cents at 34 Washington Street. Value received. Seven per cent. from date.

ELIZABETH EWING.

Indorsed, Paid 10/ 5/93, $50.00
" 10/31/93, 10.00
" 12/ 5/93, 5.00
" 5/ 5/94, 10.00
" 8/ 8/95, 50.00

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "7."

$5,000. CHICAGO, April 1, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago five thousand dollars at 100 State Street, Chicago, Ill. Value received.

F. E. MORSE & SON.

Indorsed, Paid 5/27/95, $1,719.64. Paid by assignee.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "8."

$3,500. CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of

the First National Bank of Chicago, thirty-five hundred dollars at the First National Bank. Value received.

F. E. MORSE & SON.

Indorsed, Morse, Mitchell & Williams.

EXHIBIT "B."

CHICAGO, ILL., December 26, 1893.

J. H. Welch, Esq.,

Executor of the will of E. N. Welch, deceased.

Forestville, Conn.

DEAR SIR: I desire to notify you that I have assigned, set over, and transferred to the First National Bank of Chicago, Ill., all my right, title, and interest in and to so much of the estate of my late father, E. N. Welch, deceased, as has not been distributed, and you will, therefore, account for and pay over to said First National Bank of Chicago, instead of to me, all money and other property coming to me or to which I may be entitled, at any time hereafter, from said estate of my deceased father.

Please note at the foot hereof, for the satisfaction and security of said bank, that you will undertake to do this, and in case you should cease to be executor of the estate, otherwise than by death, you would promptly give notice of the fact to said bank, in order that it might give express notice of this assignment to your successor in the trust.

Yours truly,

H. DRUSILLA MITCHELL.

I take notice of the foregoing and will comply therewith.

J. H. WELCH,
Executor.

EXHIBIT "G."

December 26, 1893.

Received of H. Drusilla Mitchell an assignment of all her right, title, and interest in the undistributed estate of her late father, E. N. Welch, deceased, the same being so received in pledge to secure the payment of her indebtedness to the undersigned, its successors or assigns, upon her guaranty of certain notes made or endorsed by Morse, Mitchell & Williams of Chicago, amounting to $26,000, more or less.

In consideration of security pledged as aforesaid, the undersigned undertakes and promises to surrender and re-assign the same, or so much thereof as shall not have been applied on said indebtedness, at any time on demand after payment in full of the indebtedness aforesaid, and not to enforce or demand payment of said indebtedness from said H. Drusilla Mitchell, her heirs, executors, or administrators prior to January 1, 1895, except from the interest or property assigned as security aforesaid.

THE FIRST NATIONAL BANK OF CHICAGO,
By L. J. Gage, *Pt.*

Filed and granted December 17, 1896.

George A. Conant,
Assistant Clerk.

Edward A. Freeman, Trustee, Appeal from Doings of Commissioners, Estate of H. Drusilla Mitchell.	Superior Court, Hartford County. December 17, 1896.

RESERVATION.

The above-entitled case, by consent and at the request of all the parties to the record, is reserved for the advice of the Supreme

Court of Errors upon the issues joined and facts agreed and stipulated by the parties.

GEORGE W. WHEELER,
Judge.

SUPERIOR COURT, HARTFORD COUNTY, } *Clerk's Office.*

The above and foregoing is a true copy of record in said Superior Court.

Attest, C. W. JOHNSON, *Clerk.*

SUPREME COURT, HARTFORD COUNTY, } *Clerk's Office.*

The above and foregoing is a true copy of record in said Supreme Court.

Attest, C. W. JOHNSON, *Clerk.*

At a Supreme Court of Errors holden at Hartford, in and for the First Judicial District of the State of Connecticut, on the first Tuesday of January, in the year of our Lord one thousand eight hundred and ninety-seven:

Present,

Hon. CHARLES B. ANDREWS, *Chief Justice.*
Hon. DAVID TORRANCE,
Hon. AUGUSTUS H. FENN,
Hon. SIMEON E. BALDWIN,
Hon. WILLIAM HAMERSLEY,
} *Associate Judges.*

Hon. Frederic B. Hall, Judge of the Superior Court, attending and acting as Judge of the Supreme Court of Errors in the case of State of Connecticut vs. Henry T. Blake, Trustee, *et al.*, in place of Baldwin, Judge, disqualified.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM THE DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUSILLA MITCHELL, INSOLVENT DEBTOR.	The twenty-third day of February, 1897. Reservation by the Superior Court in and for the County of Hartford.

JUDGMENT.

This reservation, presenting questions of law which have arisen in the trial of said cause pending in said Superior Court, as may appear in the certified transcript of record and finding of the trial judge on file in this court, was made by said Superior Court on December 17, 1896, and came to this court at its January term, 1897, when the appellant and The First National Bank of Chicago appeared and were fully heard.

Whereupon it is considered and adjudged that the said Superior Court be and is hereby advised to disallow all the claim of the appellee, The First National Bank of Chicago.

All which I have caused by these presents to be exemplified and the seal of the Supreme Court of Errors of the State of Connecticut to be hereunto affixed, and do hereby certify that the within and foregoing is a true copy of said original files and record.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Hartford, in said county and State, this thirteenth day of March, A.D. 1899.

GEORGE A. CONANT,

[SEAL.] Clerk of the Supreme Court of Errors for the First Judicial District, County of Hartford, State of Connecticut.

STATE OF CONNECTICUT, } ss.
LITCHFIELD COUNTY. }

I, Charles B. Andrews, Chief Justice of the Supreme Court of Errors of the State of Connecticut, do hereby certify that George A. Conant, whose name is subscribed to the preceding exemplification, is the Clerk of the said Supreme Court of Errors in and for said Hartford County, being in the First Judicial District of said State of Connecticut, duly appointed and sworn; that the above is his genuine official signature, and that full faith and credit are due to his official act. I further certify that the seal affixed to said exemplification is the seal of the Supreme Court of Errors, and that the foregoing attestation is in due form.

Dated at Litchfield, this 17th day of March, A. D. 1899.

CHARLES B. ANDREWS,
Chief Justice of the Supreme Court of Errors
of the State of Connecticut.

Exhibit "C."

Writ of Error.

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT, — GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, or some of you, between the First National Bank of Chicago and H. Drusilla Mitchell *et al.*, a manifest error hath happened, to the great damage of the said The First National Bank, as is in and appears by said complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Second Circuit, together with this writ of error, so that you have the same at said place before the Justices aforesaid on the 10th day of April next, that the record and proceedings aforesaid being inspected, the said Justices of the Court of Appeals may cause further to be done therein to correct the error, what of right and according to the law and custom of the United States ought to be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 12th day of March, in

the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

E. E. MARVIN,
Clerk of the Circuit Court of
the United States for the
District of Connecticut.

[SEAL.]

Allowed:

N. SHIPMAN,
Circuit Judge.

(Endorsed) — No. 435.— U. S. Circuit Court.— First National Bank of Chicago *vs.* H. Drusilla Mitchell *et al.*— Writ of Error.— Filed March 12, 1898.— E. E. Marvin, Clerk.

FIRST NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA MITCHELL *et al.*

Be it remembered that heretofore, to wit, on the 30th day of December, A.D. 1895, H. Drusilla Mitchell and G. H. Mitchell, her husband, both of Bristol, Hartford county, and State of Connecticut, were attached and summoned to appear before the Circuit Court of the United States of America for the District of Connecticut, to be held in the United States Court Room in the city of New Haven, on the fourth Tuesday of April, A.D. 1896, then and there to answer unto the First National Bank of Chicago, a corporation duly organized under the laws of the United States, and located and doing business in the city of Chicago, State of Illinois, in a civil action, and herein the plaintiff complains and says:

1. The plaintiff is a corporation duly organized under the laws of the United States and having its principal place of business in the city of Chicago, in the State of Illinois, and is a citizen of said State.

2. The defendants are residents of the town of Bristol, in the State and District of Connecticut, and are citizens of said State.

3. On the 20th day of February, 1891, the defendant, H. Drusilla Mitchell, at said Chicago, by an instrument in writing (a copy of which is hereto attached, marked "Exhibit A," and made part of this paragraph), requested the plaintiff to extend credit from time to time to a copartnership, doing business at said Chicago under the name of Morse, Mitchell & Williams, and in consideration of such credit being given to said Morse, Mitchell & Williams by the plaintiff, the defendant the said H. Drusilla Mitchell guaranteed and promised to pay to the plaintiff all sums of money to the extent of thirty thousand dollars which should become due to the plaintiff from said Morse, Mitchell & Williams.

4. Relying upon said guarantee and promise and in consideration thereof, the plaintiff extended credit and advanced money to said Morse, Mitchell & Williams from time to time within the time specified in said instrument to the amount of thirty thousand dollars.

5. Said Morse, Mitchell & Williams have not repaid said sums to the plaintiff, and the same now are and long since have been due to the plaintiff from the defendant the said H. Drusilla Mitchell.

6. On or about the 1st day of December, 1893, the plaintiffs demanded payment of the amount of money due under said instrument from the defendant the said H. Drusilla Mitchell and the same was refused.

The plaintiff claims thirty thousand dollars damages. And you are further commanded to have a true and attested copy of

this writ and of the accompanying complaint at least twenty days before the session of this court to which it is returnable, with J. H. Welch, of the town of Bristol, in said District and State of Connecticut, or at his usual place of abode, as he is the executor of the will of E. N. Welch, deceased, and as such executor is the agent, trustee, and debtor of said defendant H. Drusilla Welch, and as such executor has concealed in his hands the goods or estate of the said H. Drusilla Mitchell, or as such executor is indebted to her.

And thereafter, to wit, of the 20th day of April, A.D. 1896, the defendants entered their appearance by Messrs. C. E. Mitchell and T. M. Maltbie, and filed their plea in abatement as follows, viz.:

First National Bank of Chicago	Circuit Court of the U.
vs.	S., Dis. of Connect't,
H. Drusilla Welch *et al.*	April, 28, 1896.

IN ABATEMENT.

The defendant H. Drusilla Mitchell pleads in abatement, because at the time said contract is alleged to have been made and at the time of the commencement of this action she was a married woman, the wife of George H. Mitchell, since deceased, and was so married prior to April 27, 1877, viz.: on the day of , 1857, and has not entered into the contract authorized by Section 2798, General Statutes of Connecticut.

And therefore she prays judgment

By C. E. Mitchell and T. M. Maltbie,
Her Attorneys.

Second Substitute Plea in abatement.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF CONNECTICUT.

MAY 22, 1897.

FIRST NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA MITCHELL *et al.*

IN ABATEMENT.

The defendant H. Drusilla Mitchell pleads in abatement, because she signed said writing, Exhibit "A," at her domicile in Bristol, in the State of Connecticut, and was, at the time of signing the same, a married woman, the wife of said George H. Mitchell, to whom she was married in 1857, at said Bristol, where she has ever since resided.

And therefore she prays judgment.

H. DRUSILLA MITCHELL,
By T. M. MALTBIE,
Her Atty.

U. S. CIRCUIT COURT,

DISTRICT OF CONNECTICUT.

MAY 26, 1897.

FIRST NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA MITCHELL.

ANSWER.

1. Paragraphs 1 and 2 of the complaint are admitted.

2. Paragraph 3 is denied. Said writing, "Exhibit A," was signed by the defendant at her domicile in Bristol, in the State of Connecticut, and was not otherwise made, executed, or delivered by her.

3. The defendant, at the time she signed said writing, was a married woman, the wife of George H. Mitchell, of said Bristol, to whom she was married in 1857, at said Bristol, where she then resided, and ever since has resided.

4. Paragraphs 4 and 5 are denied. Said copartnership of Morse, Mitchell & Williams, at the time the said writing, Exhibit "A," was signed by the defendant, and prior thereto, was indebted to the plaintiff in a large sum, viz.: $25,000 and more; and the plaintiff did not thereafter give said copartnership additional credit, but such indebtedness was larely reduced.

T. M. Maltbie,
Atty. for Defendant.

Stipulation.

U. S. CIRCUIT COURT,
District of Connecticut.
May 26, 1897.

First National Bank of Chicago
vs.
H. Drusilla Mitchell.

We hereby stipulate and agree that the above entitled case shall be withdrawn from the jury and be tried to the Court.

Case, Bryant & Case
Attys. for Plaintiff.

T. M. Maltbie,
Atty. for Defendant.

And thereafter, on the 8th day of June, 1897, the facts in the case were agreed to by the parties and filed in court as follows, viz.:

THE CLAIMS OF THE FIRST NATIONAL BANK OF CHICAGO AGAINST MRS. H. DRUSILLA MITCHELL.

STATEMENT OF FACTS.

1. Said bank is organized under the laws of the United States and engaged in the business of banking in Chicago, in the State of Illinois.

2. Said H. Drusilla Mitchell was born and has always resided in Bristol, State of Connecticut. She was married there in 1857 to George H. Mitchell, and with her said husband established a home at Forestville, in said Bristol, where they resided until his death, which occurred March, 1896, and where she now resides.

3. Said George H. Mitchell was a member of the firm of Morse, Mitchell & Williams, a copartnership located at said Chicago, engaged in mercantile and real estate business. The other members of said firm were Francis E. Morse and Frederick C. Williams, both of said Chicago.

4. Said Morse, Mitchell & Williams kept an account and did business with said First National Bank, and on the 20th day of February, 1891, were largely indebted to said bank, viz.: in the sum of twenty thousand dollars ($20,000) or more, as evidenced by their notes payable to said bank.

5. On said February 20, 1891, said firm and said Morse, Williams, and George H. Mitchell executed to said bank at Chicago the paper, a copy of which is hereto annexed, marked "A."

Said paper was prepared by said bank, which had agreed with said firm to continue the line of credits to it upon the execution of said paper by said firm and its individual members, and by Mrs. H. Drusilla Mitchell, then at her home in said Bristol.

6. Said George H. Mitchell thereupon took said paper and brought it with him to his residence at said Forestville, and there procured his said wife, H. Drusilla Mitchell, to sign the same, and the same was thereafter enclosed, addressed and sent by mail to said Morse, in Chicago, who delivered said paper to said bank.

7. Said bank continued to extend credit to said Morse, Mitchell & Williams until said firm became insolvent and made an assignment for the benefit of its creditors on July 30, 1893.

8. At the time of such insolvency and assignment said bank held and owned the notes of Morse, Mitchell & Williams, renewals of unpaid portions of said first mentioned notes for the sum of sixteen thousand five hundred dollars ($16,500), copies of which renewal notes, marked respectively "1," "2," "3," "4," "5," are hereto attached. Also note made by Elizabeth Ewing, two hundred eighty-nine dollars and sixty cents ($289.60), endorsed by Morse, Mitchell & Williams, copy attached, marked "6."

9. Said bank also held and owned notes made by F. E. Morse & Son, another business firm in Chicago, said F. E. Morse being the above-mentioned Francis E. Morse, for the sum of eighty-five hundred dollars ($8,500), which notes were endorsed by said Morse, Mitchell & Williams, and discounted for the benefit of said Morse & Son by said bank. Copies of said notes, marked "7" and "8," are hereto attached. Said F. E. Morse & Son became insolvent, and made an assignment for the benefit of their creditors, and said notes were presented as a claim against the estate of F. E. Morse & Son, and on May 27, 1895, said bank

was paid seventeen hundred nineteen dollars and sixty-four cents ($1,719.64) as a dividend upon said notes.

Notice of non-payment of said notes was not given to said endorsers, except the constructive notice arising from the foregoing facts.

10. Said bank, December 26, 1893, prepared the letter addressed to J. H. Welch, Esq., executor of the will of E. N. Welch, deceased, a copy of which is hereto annexed, marked "B," which letter was sent to said George H. Mitchell, at Forestville, Conn., by said bank to procure the signature of his wife, said H. Drusilla Mitchell, thereto. With reference to said letter, said George H. Mitchell addressed said bank letters dated December 30, 1893, January 8, 1894, and January 23, 1894, in the last of which letters he enclosed said letter addressed to J. H. Welch. He also received from Orville Peckham, attorney of said bank, a letter dated January 10, 1894. Copies of said letters are hereto attached, marked "C," "D," "E," "F." Said letters were duly mailed and received by the parties to whom addressed. Upon the receipt of said letters by said bank, said bank executed and transmitted to George H. Mitchell by mail the receipt, copy of which is attached, marked "G," but the same was never delivered by said George H. Mitchell to said H. Drusilla Mitchell, or its existence made known to her until after his death.

11. The printed statutes and the decisions of courts of last resort of the State of Illinois are referred and made part hereof, as showing the existing law of said State at the time of said several transactions.

12. The original notes, papers, and letters in said bank or its attorneys, copies of which are hereto attached, shall be produced for examination and use in the trial and argument when said claim is heard.

13. It is expressly stipulated by the parties hereto that this agreed statement of facts may be used upon the hearing as to the allowance of this claim by the commissioners on the insolvent estate of H. Drusilla Mitchell, and in case of appeal by either party from the allowance or disallowance of said claim upon the hearing of such appeal in the Superior Court for Hartford county or any other Court which may hear the same. Also that the statement of facts may be used by either party in the treatment of the case now pending in the United States Circuit Court for the District of Connecticut.

Dated at Hartford, this June 9, 1896.

CASE, BRYANT & CASE,
Attorneys for the First National Bank of Chicago.

T. M. MALTBIE,
Atty. for H. Drusilla Mitchell, E. A. Freeman, Trustee, etc.

EXHIBIT "A."

We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they may desire from time to time, and in consideration of all and any such credit given we hereby guarantee any and all indebtedness now due or which may be hereafter become due from them to said bank to the extent of thirty thousand dollars and waive notice of the acceptance of the guaranty and of any and all indebtedness at any time covered by the same.

This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by the said

First National Bank of Chicago.

MORSE, MITCHELL & WILLIAMS,
FRANCIS E. MORSE,
FREDERICK C. WILLIAMS,
G. H. MITCHELL,
H. DRUSILLA MITCHELL.

CHICAGO, ILL., February 20, 1891.

EXHIBIT "1."

$3,000. CHICAGO, ILL., April 12, 1893.

Four months after date we promise to pay to the order of the First National Bank three thousand dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "2."

$5,000. CHICAGO, ILL., April 17, 1893.

Four months after date we promise to pay to the order of the First National Bank five thousand dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "3."

No. 87,773.

$5,000. CHICAGO, ILL., May 16, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago, Five Thousand Dollars with interest at seven per cent. per annum, after due at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

Payable at 34 and 36 Washington Street, Venetian Bldg.

EXHIBIT "4."

$2,500. CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of First National Bank Twenty-five Hundred Dollars, at 24 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

Indorsed, F. E. Morse & Son.

EXHIBIT "5."

No. 92,099.

$1,000. CHICAGO, ILL., June 30, 1893.

Ninety days after date we promise to pay to the order of the First National Bank of Chicago one thousand dollars with interest at seven per cent. after due at the office of said Bank. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "6."

$289.60. CHICAGO, June 8, 1893.

Three months after date I promise to pay to the order of Morse, Mitchell & Williams two hundred eighty-nine 60/100 dollars at 34 Washington Street. Value received. Seven per cent. from date.

ELIZABETH EWING.

Endorsed, Paid 10/ 3/93, $50.00
" 10/31/93, 10.00
" 12/ 5/93, 5.00
" 5/ 5/94, 10.00
" 8/ 8/95,

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "7."

$5,000. CHICAGO, April 1, 1893.

Four months after the date we promise to pay to the order of the First National Bank of Chicago Five Thousand Dollars at 100 State Street, Chicago, Ill. Value received.

F. E. MORSE & SON.

Indorsed, Paid 5/27/95. $1,719.64. Paid by assignee.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "8."

$3,500. CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago Thirty-five hundred dollars at the First National Bank. Value received.

F. E. MORSE & SON.

Indorsed, Morse, Mitchell & Williams.

EXHIBIT "B."

CHICAGO, ILL., December 28, 1893.

J. H. WELCH, Esq.,

Executor of the Will of E. N. Welch, Deceased,

Forestville, Conn.

DEAR SIR: I desire to notify you that I have assigned, set over, and transferred to the First National Bank of Chicago, Illinois, all my right, title, and interest in and to so much of the estate of my late father, E. N. Welch, deceased, as has not been distributed, and you will therefore account for and pay over to the said First National Bank of Chicago, instead of to me, all money and other property coming to me or to which I may be

entitled at any time hereafter from said estate of my deceased father. Please note at the foot hereof, for the satisfaction and security of said bank, that you will undertake to do this, and in case you should cease to be the executor of the estate otherwise than by death you would promptly give notice of the fact to said bank in order that it might give express notice of this assignment to your successor in the trust.

Yours truly,

H. DRUSILLA MITCHELL.

I take notice of the foregoing and will comply therewith.

J. H. WELCH,
Exr.

EXHIBIT "C."

FORESTVILLE, CONN., December 30, 1893.

I arrived home yesterday and at this writing is inclined to sign the papers which I brought with me. She wishes to consider the matter over Sunday but I think there is no doubt that I will be able to send it to you the first of the week.

Yours very truly,

(Signed) G. H. MITCHELL.

EXHIBIT "D."

FORESTVILLE, CONN., January 8, 1894.

FIRST NATIONAL BANK, CHICAGO, ILL.

GENTLEMEN: I have to make one more apology. I was called to New York on important business connected with our Clock Company last week and only returned Saturday, consequently I was unable to attend to our matters and it was only to-day that I succeeded in getting the signatures as Mr. Welch has also been away. I now enclose the paper just as you lawyers

wrote it, except that I have, by advice of my counsel, added the conditions which I presume will be satisfactory to you.

Will you kindly own receipt of same and also send me a statement of the notes up to January 1st and oblige

Yours very truly,

(Signed) G. H. MITCHELL.

EXHIBIT "E."

CHICAGO, ILL., Jan. 10, 1894.

GEO. H. MITCHELL, Esq.,

Forestville, Conn.

DEAR SIR: Your favor of the 8th inst. to First National Bank has been referred to me. The additions made by Mrs. Mitchell to the terms of the assignment of her interest in her father's estate are not satisfactory and are not in accordance with the arrangements made between you and the bank when you were here. You will, I think, remember that the arrangement was that the assignment should be on its face unconditional, but that I should prepare and the bank should give Mrs. Mitchell a paper setting forth the terms on which the assignment was received and was to be held. I have drawn such a paper and enclose it and the paper signed by Mrs. Mitchell herewith. Please substitute for the latter a new instrument, leaving out the last two paragraphs of the present one and send it to me, keeping for Mrs. Mitchell the bank's receipt, etc.

Your counsel will probably see no objection to the form in which I have preferred to provide the protection which Mrs. Mitchell is entitled to and will find it sufficient besides being what was agreed to with you. It is the form in which we always put such matters, and they are very frequent matters with us. You will note that Mrs. Mitchell is given the time to January 1, 1895, which you stipulated for while here. The bank under-

stands from you that the remaining estate of Mr. E. N. Welch is not distributable under the will (or at least that a large part of it is not), for some two or three years yet. The executor will understand of course, that we shall and can demand under the assignment only what Mrs. Mitchell herself could demand.

Yours very truly,

(Signed) ORVILLE PECKHAM.

EXHIBIT "F."

FORESTVILE, CONN., January 23, 1894.

FIRST NATIONAL BANK, CHICAGO, ILL.

GENTLEMEN: Once more I have got the parties together and herewith enclose the document as originally made by you and which I trust will now be satisfactory. Apologizing for keeping you waiting, I remain,

Yours very truly,

G. H. MITCHELL.

EXHIBIT "G."

December 26, 1893.

Received of H. Drusilla Mitchell an assignment of all her right, title, and interest in the undistributed estate of her late father, E. N. Welch, deceased, the same being so received in pledge to secure the payment of her indebtedness to the undersigned, its successors or assigns, upon her guaranty of certain notes made or endorsed by Morse, Mitchell & Williams, of Chicago, amounting to $26,000, more or less.

In consideration of security pledges as aforesaid, the undersigned undertakes and promises to surrender and reassign the same or so much thereof as shall not have been applied on said

indebtedness at any time after payment in full of the indebtedness aforesaid and not to enforce or demand payment of said indebtedness from said H. Drusilla Mitchell, her heirs, executors, or administrators, prior to January 1, 1895, except from the interest or property assigned as security aforesaid.

THE FIRST NATIONAL BANK OF CHICAGO,
By L. T. Gage, *Pr.*

UNITED STATES CIRCUIT COURT,

District of Connecticut.

First National Bank of Chicago
vs.
H. Drusilla Mitchell.

TOWNSEND, *District Judge*:

Action on a guaranty, heard upon complaint and answer and an agreed statement of facts. The defendant is a resident of Connecticut and a married woman, having been married in 1857, and having resided continuously at Bristol, Connecticut, since that time.

Defendant's husband, G. H. Mitchell, was a member of a copartnership, Morse, Mitchell & Williams, doing business at Chicago.

At the request of her husband she signed a guaranty, which was taken by him to Chicago and there delivered to the plaintiff. The guaranty was dated at Chicago, and had been signed by the members of the firm there before it was signed by the defendant.

Plaintiff claims that, although defendant did not personally leave the State of Connecticut, yet, as the written contract was dated at Chicago and was delivered by her husband at Chicago,

and was to be performed there, defendant must be taken to have made the contract at Chicago, and as in Illinois a married woman is allowed to contract for all purposes, defendant could so contract in Illinois, and is bound by the guaranty.

After the suit was brought defendant made an assignment in insolvency. The plaintiff presented the claim herein involved to the commissioners on her estate, and it was allowed by them, and the case was taken by her trustee in insolvency by appeal to the Superior Court, and upon reservation to the Supreme Court of Errors of Connecticut, where precisely the same facts were presented and passed upon.

The Court there held that defendant, being a married woman, had no capacity to make any such contract; that to sign the guaranty in Connecticut and authorize her husband as her agent to deliver the guaranty at Chicago was to enter into a contractual relation in Connecticut which she had no capacity to do; that, therefore, she could not while in Connecticut authorize her husband to take the guaranty to Chicago and deliver it, and that, therefore, it was never delivered by her.

Before considering the legal propositions involved in this decision, the question arises whether this Court will enforce against a married woman who has always resided in Connecticut a contract made by her in writing sent to another State, she not personally leaving the State of Connecticut, which the highest court of Connecticut has pronounced invalid and unenforcible in that State.

In Miliken vs. Pratt, 125 Mass., 375, the facts were practically identical; the guaranty in that case having been taken by the husband to the State of Maine. The Court held that the contract was made in Maine and valid in Massachusetts, saying: "If the contract is completed in any State it makes no difference in principles whether the citizen of this State goes in person or

sends an agent or writes a letter across the boundary line between the two states."

In finally deciding the question, however, the Court lay stress upon the fact that at the time of the trial of the case the wife could have legally made the contract in Massachusetts, saying: "The question, therefore, is whether a contract made in another State, which a married woman was not at the time capable of making under the law of this commonwealth, but was then allowed by the law of that State to make and which she could now legally make in this commonwealth, will sustain a case against her in our courts."

And Milliken vs. Pratt also seems to hold that the guaranty made in Maine, as above stated, would not be enforcible in Massachusetts if Massachusetts had not consented to such enforcement, saying: "As the law of another State cannot operate or be executed in this State by its own force, but only by the comity of this State, its approbation and enforcement here may be restricted by possible prohibition of statute. A State may always, by express enactment, protect itself from being obliged to enforce in its courts contracts made abroad by its citizens which are not authorized by its own laws. It is possible, also, that in a State where the common law prevails in full force, by which a married woman was deemed incapable of binding herself by any contract whatever it may be inferred that such an utter incapability lasting throughout the joint lives of husband and wife must be construed as so fixed by the settled policy of the State for the protection of its own citizens that it could not be held by the Courts of that State to yield to the laws of another State in which she might undertake to contract."

In Bell vs. Packard, 69 Maine, 105, a married woman sent a contract to Maine, where she could have legally made it, and the Supreme Court of Maine held that the contract was made in Maine and was valid and enforcible there.

In Bowles v. Field, 78 Fed., 742, a married woman residing in Indiana, while transiently in Ohio, gave notes as surety for her husband. The laws of Indiana allowed a married woman to contract for all purposes, except as specially provided, and among the exceptions was a contract for suretyship. The Court held, that having a general power to contract this particular limitation could have no extra territorial force. The Court said: "It is not charged that she went to Ohio and executed the notes as surety for her husband for the purpose of evading the law of domicil." This seems to be an intimation that if she had not had a general power to contract and had remained in Indiana, the contract would not have been enforcible.

The common law which makes the contract of a married woman invalid may still be accepted as the general rule for the states which have not made exceptions by statute. The three cases cited above, holding the contract of a married woman valid, are in states where a woman has this general power to contract, and it is implied in two of these decisions that the State of her domicil would have had the power to protect a married woman from the result of her contract made while personally present in such State if it had chosen to do so. It may be admitted, as stated by Judge Story in his Conflict of Laws, Sec. 103, in regard to incapacity incident to coverture, "The law of the place where the contract is made or the act is done now governs." And that as stated in Scudder vs. Bank, 91 U. S., 406: "The validity of a contract is to be determined by the law of the place where it is made." Yet I do not think this principle has been carried so far in any decided case as a judgment for the plaintiff in this case would require.

The capacity of citizens of a State so long as they actually remain within the borders of the State would seem to be a matter of local law to be controlled by the laws of the State and not to be evaded by the simple device of sending or mailing a letter to some other State. Suppose that the laws of State should pro-

vide that infants might attain their majority and become capable of contracting at the age of eighteen years, could it be held that a minor, eighteen years old, in Connecticut, could by mailing a contract to that State subject his property in Connecticut to execution against the will of her guardian and against the determination of the Legislature and Courts of Connecticut?

"It may be said generally wherever the decisions of the State courts related to some law of a local character which may have become established by those courts or has always been a part of the law of the State that the decisions upon the subject are usually conclusive and always entitled to the highest respect of the Federal Court." Where such local law on custom has been established by repeated decisions of the highest courts of the State, it becomes also the law governing courts of the United States sitting in that State" (Bacher vs. Cheshire R. R. Co., 125 U. S., 555; Burgess vs. Seligmann, 107 U. S., 20.)

In the present case the law by which the invalidity of a contract is established is the common law, and the decisions that a married woman has capacity to make such contracts are founded upon local statutes.

In these circumstances, I think, it is the duty of this Court to follow the decisions of the Connecticut court of last resort. Let judgment be entered for defendant.

CASE, BRYANT & CASE,
for Plaintiffs.

HUNGERFORD & MALTBIE,
for Defendants.

And at the same term of court, to wit, on the 7th day of March, the plaintiff, by its attorneys, duly appeared, and the defendant, by her attorneys, also duly appeared and demanded judgment in accordance with the decision of Court, whereupon

it is considered and adjudged by the Court that the issue is for the defendant, and that the defendant do recover of the plaintiff its costs.

THE UNITED STATES CIRCUIT COURT OF APPEALS,

OCTOBER TERM, 1897.

FIRST NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA MITCHELL *et al.*

ASSIGNMENT OF ERRORS.

Afterwards, to wit, on the 12th day of March, 1898, comes the First National Bank of Chicago, plaintiff in error, by their attorneys, Case, Bryant & Case, and say that the order and judgment in said cause is erroneous and against the just rights of the plaintiff in error and for the following reasons:

FIRST. — Because the Court, though requested, did not hold that the guaranty, upon which this suit was brought, was executed by the said H. Drusilla Mitchell, in the city of Chicago, where the same would be a valid contract.

SECOND. — Because the Court, though requested, did not hold that said guaranty was made and delivered in Chicago, in the State of Illinois, and governed by the laws of the State of Illinois.

THIRD. — Because the Court, though requested, did not hold that said guaranty was an Illinois contract and governed by the laws of Illinois and enforcible by comity in this jurisdiction.

FOURTH. — Because the Court, though requested, did not hold that the delivery of said contract in Chicago by said Francis E. Morse was a delivery in Chicago by said H. Drusilla Mitchell.

FIFTH. — Because the Court refused to hold that H. Drusilla Mitchell could, by sending said guaranty by mail to Chicago for delivery, thereby make the same a valid contract under the laws of Illinois, when the same was properly delivered and accepted and enforcible in this jurisdiction.

SIXTH. — Because the Court, though requested, did not hold that a contract in writing made by a married woman to be performed in Illinois and enforced in Illinois by the laws was enforcible in the State of Connecticut.

SEVENTH. — Because the Court, though requested, did not hold that said contract was a good and valid contract, and enforcible in Connecticut.

EIGHTH. — Because the Court did not render judgment in favor of the plaintiff in error instead of in favor of the defendant in error.

PLAINTIFF IN ERROR,
By CASE, BRYANT & CASE,
Its Attorneys.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF CONNECTICUT.

FIRST NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA MITCHELL *et al.*

PETITION FOR WRIT OF ERROR.

The First National Bank of Chicago, by its attorneys, Case, Bryant & Case, considering itself aggrieved by the order and judgment entered on the 7th day of March, 1898, in the above

entitled cause, does hereby petition for a writ of error from said order of judgment to the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the assignment of error, which is filed herewith, and it prays that such writ of error may be allowed, and that a transcript of the record, proceedings and papers upon which said order and judgment were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated March 12, 1898.

CASE, BRYANT & CASE,
Attorneys for the Plaintiff.

The foregoing petition for a writ of error is allowed.

Dated March 12, 1898.

N. SHIPMAN,
Circuit Judge.

UNITED STATES CIRCUIT COURT OF APPEALS,

OCTOBER TERM, 1897.

FIRST NATIONAL BANK OF CHICAGO
Plaintiff in Error,
vs.
H. DRUSILLA MITCHELL.
Defendant in Error.

Know all men by these presents that we, The First National Bank of Chicago, Cook County, State of Illinois, as principal, and Percy S. Bryant, of East Hartford, Hartford County, Connecticut, as surety, are held and firmly bound unto H. Drusilla Mitchell *et al.*, the above named defendants in error, in the sum of two hundred and fifty dollars to be paid to the said H. Drusilla Mitchell *et al.*, their executors, administrators, and assigns,

to the which payment well and truly to be made we bind ourselves and each of us jointly and severally and our successors and our heirs, executors, administrators, and assigns firmly by these presents.

Dated this 12th day of March, 1898.

Whereas, the above named The First National Bank of Chicago has petitioned for a writ of error to the United States Circuit Court of Appeals for the Second Circuit to reverse the judgment rendered in the above entitled action by the Circuit Court of the United States for the District of Connecticut;

Now, therefore, the condition of this obligation is such that if the above named The First National Bank of Chicago shall prosecute its said writ of error to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and virtue.

THE FIRST NATIONAL BANK OF CHICAGO, [L. S.]

By CASE, BRYANT & CASE, *Attys.*

PERCY S. BRYANT, [L. S.]

Approved March 12, 1898.

N. SHIPMAN,
Circuit Judge.

UNITED STATES OF AMERICA, *ss.*:

To H. DRUSILLA MITCHELL *et al.*, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Second Circuit, in the city of New York, in the State of New York, on the 9th day of April, A.D. 1898, pursuant to a writ of error granted and filed in the Clerk's office of the Circuit Court of the United States for the District of Connecticut, wherein the First National

Bank of Chicago is plaintiff in error, and you are the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and reversed, and speedy justice should be done to the parties in that behalf.

Dated at Hartford, March 12, 1898.

N. SHIPMAN,
Circuit Judge.

Service of the above and foregoing citation is hereby accepted.

Dated this 12th day of March, 1898.

DEFENDANT IN ERROR,
By T. M. MALTBIE,
Atty.

CLERK'S OFFICE, U. S. CIRCUIT COURT,
DISTRICT OF CONNECTICUT,
HARTFORD, March 22, 1898.

I, E. E. Marvin, Clerk of the Circuit Court of the United States for the District of Connecticut, do certify that the foregoing is a true copy of the record and proceedings and all things concerning the same of record and on file in said court in a certain action at law therein entitled The First National Bank of Chicago *versus* H. Drusilla Mitchell *et al.*

In testimony whereof, I have set hereto my hand and the seal of said court the day and place first above written.

E. E. MARVIN,
Clerk.

[SEAL.]

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

No. 35. — October Term, 1898.

Submitted December 13, 1898. Decided March 1, 1899.

FIRST NATIONAL BANK OF CHICAGO Plaintiff in Error, *vs.* H. DRUSILLA MITCHELL *et al.*, Defendant in Error.	In Error to the Circuit Court of the United States for the District of Connecticut.

Before Judges Wallace, Lacombe, and Shipman.

WALLACE, *Circuit Judge.* — This action was tried in the court below without the intervention of a jury, and upon the facts set forth in the stipulation of the parties, and found by the Court, there should have been a judgment for the plaintiff for the sum indemnified by the guaranty signed by the defendant, H. Drusilla Mitchell, if she, being a married woman, was competent to make the contract. In deciding adversely to the plaintiff, the Court below followed the decision of the Supreme Court of Connecticut in Freeman's Appeal (68 Conn., 533) upon the same facts, in a suit brought by the plaintiff subsequent to the present action to establish the guaranty as a demand against the estate of the defendant in insolvency.

The question in the case is whether a guaranty payable in the State of Illinois and delivered to the plaintiff there, signed by a married woman at her domicile in Connecticut to enable her husband to procure credit with the plaintiff, delivered by her to her husband, and sent by him by mail to the plaintiff, is a valid contract, she being disqualified by the law of Connecticut from making a contract as surety, and authorized to do so by the laws

of Illinois. In other words, the question is whether the incapacity to contract by the law of the State of a person's domicile attaches to his contractual act in another State where the disability has been removed. This question has been much considered by commentators upon private international law, and has encountered the divergence of opinion which so frequently characterizes their essays. We shall not undertake to rehearse their views or summarize their conclusions, or to discuss the question upon principle. It has been considered and decided in respect to the incapacity of coverture and minority several times by the courts of this country, and uniformly with the same result, except in Freeman's Appeal. The previous authorities are collated in Milliken vs. Pratt (125 Mass., 374), and the opinion delivered is such a complete exposition of them, that other references are unnecessary. The judgment determines the precise question presented in this case. In that case the plaintiffs sued in Massachusetts a married woman, domiciled there, who had signed a guaranty for her husband intended to be used by him to obtain credit with the plaintiffs at Portland, Maine. She delivered it to her husband at their home in Massachusetts, and he mailed it there to the plaintiffs at Portland, and the plaintiffs received it at Portland shortly after. By the law of Massachusetts at the time a married woman was incapacitated to make such a contract; by the law of Maine she was not. The Court decided that the contract was made in Maine and controlled by the law of that State; that as regarded the capacity of the defendant, its validity depended upon the law of that State; and that as the law of Maine authorized a married woman to bind herself by such a contract, it was a valid contract, and the plaintiffs were entitled to recover.

A case exactly coincident in its facts with the present case, and with Milliken vs. Pratt, is Bell vs. Packard (69 Me., 105), except that instead of signing a guaranty the defendant in that case signed a note as surety for her husband. The Court de-

cided that the note was a Maine contract, and obligatory upon the defendant.

These adjudications proceed upon the considerations that the instrument was not effective for any purpose until delivered to the party for whose benefit it was prepared; that the place where it became operative was the place where the contract was made; and that the disqualification of the married woman in the State of her domicile did not accompany her in making a contract in a State where the disqualification had been removed. They are a consistent and logical application of that fundamental and most important rule of private international law that a contract valid by the law of the place where it is made is valid everywhere.

In Bowles vs. Field (78 Fed. Rep., 742) a married woman domiciled in Indiana went to Ohio and there executed notes as surety for her husband, she being incapacitated from making such contracts by the law of her domicile but not by the law of Ohio. The Court held the contracts valid, affirming the general proposition that the contract of a married woman, valid by the law of the place where it is made, is valid and binding upon her, notwithstanding by the law of her domicile she is incapacitated from making such a contract.

These judgments meet our approval, and upon their authority we are of the opinion that the Court below should have adjudged in favor of the plaintiff.

In Freeman's Appeal the Court conceded that the guaranty was a contract made in Illinois. It based the decision upon the ground that the defendant could not constitute her husband her agent in Connecticut to deliver the instrument. The Court used this language: "'Had Mrs. Mitchell been within the State of Illinois, when she signed the guaranty, it may be that her personal presence would have so far made her a resident of that State as to subject her to its laws, in respect to acts done within its juris-

diction. But as whatever was done in Illinois to bind her to the bank was done under an agency constituted in Connecticut, it is the law of Connecticut which must determine as to the authority of the agent, and so as to the validity of the obligation which he as such undertook to impose upon her by delivery in Chicago of the paper signed by her in Bristol." Inasmuch as the only "agency constituted in Connecticut," or the only necessary agency, was the entrusting her husband with a letter for deposit in the mail, we think the reasoning of the learned Court to be ingenious rather than convincing. The interposition of such an agency was not regarded of sufficient importance to require comment in Milliken vs. Pratt or Bell vs. Packard.

It is to be observed that the State Court did not consider the contract one which ought not to be enforced because violative of the policy of the State. Indeed, by the statute of 1877 (General Statutes of Conn., Section 2796), as to women subsequently married, the disability to make such a contract no longer exists.

We are extremely reluctant to differ with the Supreme Court of Connecticut in a case involving the same facts between substantially the same parties, not only because the opinion of that learned tribunal is always entitled to great consideration, but also because it is in a sense unseemly that there should be diverse judgments under such circumstances between the federal court sitting in that State and the highest court of the State. But the case is one which concerns the rights of a citizen of Illinois acquired before the decision of the State Court, and its decision depends not upon the construction of local laws, but upon the application of the principles of general jurisprudence. In such cases the federal courts are in duty bound to exercise their own independent judgment.

In view of the decision of the Supreme Court of Connecticut we should be glad to certify the question which we have thus considered to the Supreme Court for instructions, but we do not feel

authorized to do so, especially as that tribunal, under the power to issue a *certiorari*, can review our judgment if it sees fit.

The judgment is reversed, with instructions to the Court below to render a judgment for the plaintiff for the amount due by the terms of the guaranty.

LACOMBE, *C. J.*, dissents.

WM. C. CASE AND
PERCY S. BRYANT,
for the Plaintiff in Error.

THEODORE MALTBIE AND
FRANK L. HUNGERFORD,
for the Defendants in Error.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post-office Building in the City of New York, on the 18th day of April, one thousand eight hundred and ninety-nine

Present,
Hon. WILLIAM J. WALLACE,
Hon. E. HENRY LACOMBE,
Hon. NATHANIEL SHIPMAN,
Circuit Judges.

FIRST NATIONAL BANK OF CHICAGO
Plaintiff in Error,
vs.
H. DRUSILLA MITCHELL,
Defendant in Error.

Error to the Circuit Court of the United States for the District of Connecticut.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States, for the District of Connecticut, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said Circuit Court be and it hereby is reversed with costs, and with instructions to the Court below to render a judgment for the plaintiff for the amount due by the term of the guaranty. (W. J. W.) (N. S.)

It is further ordered that a mandate issue to the said Circuit Court in accordance with this decree.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } ss.

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 34 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of First National Bank of Chicago, Plaintiff in Error, against H. Drusilla Mitchell, Defendant in Error, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 19th day of April, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the said United States the one hundred and twenty-third.

WM. PARKIN,
Clerk.

[SEAL.]

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

H. DRUSILLA MITCHELL, *Petitioner.*

VS.

FIRST NATIONAL BANK OF CHICAGO, *Respondent.*

Petition for a writ of *Certiorari* to U. S. Circuit Court of Appeals for the Second Circuit, in the case of The First National Bank of Chicago, Plaintiff in Error, *vs.* H. Drusilla Mitchell, Defendant in Error.

Statement and Brief for Petitioner.

STATEMENT.

A copartnership, Morse, Mitchell & Williams, of which George H. Mitchell, of Bristol, Connecticut, was a member, located and in business at Chicago, Illinois, was indebted, in

February, 1891, to the respondent, The First National Bank of Chicago, more than twenty thousand dollars, which indebtedness was not thereafter increased.

On February 20, 1891, the respondent bank demanded security for the indebtedness, and said partnership agreed to procure a guaranty of the same from the petitioner, the wife of said George H. Mitchell, then at her domicil in Connecticut.

The guaranty, p. 62, was then filled out on a blank of the respondent bank, signed by said partnership and its individual members, at Chicago, and brought by said Mitchell to his residence in Bristol, Connecticut, where he procured the petitioner, his wife, to sign the paper, and then forwarded it, by mail, to his partner, Morse, at Chicago, who delivered it to the respondent bank.

The petitioner, at the time she signed said paper at her domicil in Connecticut, was a married woman, having been married to said George H. Mitchell, at Bristol, Connecticut, in 1857, where she then and ever since has resided; and she has been, during all her married life, under the disabilities of the common law and incapable of binding herself by contract.

Upon these facts, the Circuit Court of Appeals of the United States for the Second Circuit held that the guaranty was a valid and binding contract of the petitioner, and that she was liable for the indebtedness covered by the guaranty; while the Supreme Court of Errors of the State of Connecticut had held, upon the same facts, stated in the same words, that said guaranty was invalid and void as to the petitioner, and that the petitioner was incapable of making such a contract, and that no action could be maintained against her on such contract in the State of Connecticut.

CLAIMS.

The writ of *Certiorari* should issue:—

1. Because of the diverse decisions: that of the highest Court of the State of Connecticut on the one side, and that of the United States Circuit Court of Appeals for the second Circuit upon the other side.

2. Because the questions at issue in the case are of great importance to a large class of persons, domiciled in the State of Connecticut, incapable by its laws to enter into contracts and against whom actions cannot be maintained in the State Courts.

3. Because the Circuit Court of Appeals, in deciding the questions of the case, should have regarded the laws of the State of Connecticut as the rules of decision.

4. Because the established rules of Comity of a State control the action of all Courts having jurisdiction within the State. Comity refused by State Courts cannot be extended by the Federal Courts.

5. Because the final judgment of the Courts of Connecticut was an adjudication of the questions at issue, and estopped the respondent from further action on the same against the petitioner.

I.

In this case, the antagonism between the State Court and the United States Court is complete. Upon the same facts, stated in the same language, the two Courts have arrived at entirely opposite conclusions. The United States Court of Appeals for the Second Circuit has said, in effect, that the Supreme Court of Errors of the State of Connecticut was in error, has over-ruled its decision, and set aside its conclusions of law.

In Forsyth *vs.* Hammond, 166 U. S. 506, this Court held that such diverse decisions constituted a sufficient ground for the issue of the writ of *Certiorari.*

Every reason given in that case for the issue of the writ applies much more forcibly in this case.

II.

The questions decided are of importance to a large class of persons in the State, the married women who are under the disabilities of the common law; and also to those other numerous persons who have entered or may enter into contracts with them. It is of great importance to the State and its Courts to have finally determined whether the established law of the State and a long line of uniform decisions recognizing and construing it can be disregarded or over-ruled by a Circuit Court of the United States within its jurisdiction. It involves the sovereignty of the State and the right of the sovereignty to regulate its members while within its territory.

No question can or will be made as to the status of this class of persons under the law of Connecticut, and that the contract which was the basis of action in both cases was nugatory and void as to the petitioner, when signed by her in Connecticut. Whether such a void act can become a valid contract when sent across the border of the State to become operative there was the question. The one Court said that, being void in its inception, the act could not be galvanized into a contract by anything that might be done with it in another sovereignty. The other Court said that the question was controlled by principles of general jurisprudence, and the local incapacity could not avail even in the state of domicil as a defense to an action based upon the signed paper, if the paper had been used as a contract in another State.

In view of this conflict, the question should be finally and authoritatively settled by this Court. Such settlement is of importance not only to the people and Courts of the State of Connecticut, but also to those of all the other States where the disabilities of married women under the common law still exist. While we believe that all the cases upon this subject are in line with the decisions of the State of Connecticut, yet statutory modifications of the status of married women in some of the States, together with equities that seemed controlling, have led to expressions, in some cases, which appear to question the soundness of those decisions. In every case, we think it will be evident, upon analysis, that the validity of the acts of the married woman, at her domicil, was determined by the law of her domicil.

The following recent cases taken from different States all touch upon this question, many of them discuss it fully, and are here cited to show the wide interest in having a final decision which will be regarded, everywhere, as conclusive.

Bank of Louisiana *vs.* Williams, 46 Miss. 618.
Dow *vs.* Gould & Curry S. M. Co., 31 Cal. 629.
Union National Bank *vs.* Hartwell, 84 Ala. 379.
Milliken *vs.* Pratt, 125 Mass. 374.
Bell *vs.* Packard, 69 Me. 105.
Hayden *vs.* Stone, 13 R. I. 106.
Freeman's Appeal, 68 Conn. 533.
Ruhe *vs.* Buck, 124 Mo. 178.
Wright *vs.* Remington, 41 N. J. Law 48.
Gibson *vs.* Sublett, 82 Ky. 596.
Robinson *vs.* Queen, 87 Tenn. 445.
Spearman *vs.* Ward, 114 Pa. St. 634.
Armstrong *vs.* Best, 112 N. C. 59.
Evans *vs.* Cleary, 125 Pa. St. 204.

III.

The Statute of the United States, Sec. 721, providing that the laws of the several States shall be regarded as rules of decisions in trials at common law in cases where they apply, was intended to prevent such a conflict as is here presented.

The Circuit Court of the United States for the District of Connecticut, regarding the law of the State of Connecticut as the rule of decision, in rendering judgment accepted the opinion of the Supreme Court of Errors of that State as law.

The Circuit Court of Appeals found that there was error in the judgment of the Circuit Court; and, reversing that judgment, directed that the law of the State of Connecticut be disregarded.

The demoralizing effect of such a situation and its tendency to impair confidence in judicial conclusions cannot be insisted upon too strongly.

But, further than this, the law of Connecticut does not permit an action at law to be maintained against this class of married women upon such a contract in any Court in its jurisdiction.

Neither will comity be extended in that State, and effect given to the laws of another State, if the contract is prohibited or contrary to the policy of the laws of the State. Reynolds *vs.* Geary, 26 Conn. 179, 183. This being the law of the State, must be a rule of decision within the terms of the statute.

IV.

Can there be a different rule of comity for the Courts of a State and for the United States Courts sitting in that State?

Can a judicial door closed by the State be opened by the Courts of the United States?

The confusion arising from permitting a conflict upon this question would be more than unseemly.

In this case, the question arises between citizens of Illinois and Connecticut, and it relates solely to the capacity of a married woman to make a contract. Originally, married women in each State were under the disabilities of the common law. The State of Illinois, by statute, has removed those disabilities. The State of Connecticut has not removed them. Prior to the change in Illinois law, the contract in question would have been void in either State.

The State of Connecticut, in vindication of its laws and for the protection of its citizens, refuses to permit the alleged contract to be a basis of action in its courts.

The United States Court says that the statute of Illinois having made the void paper a contract it is such when it comes back to Connecticut, and will be recognized by the United States Court and enforced against the citizen of Connecticut, within the State of Connecticut, notwithstanding the law of the State and the protection the State extends to its citizens. This position confers upon non-residents rights of action which are not permitted by the State to its citizens.

Such a contract could not be enforced by a citizen of the State against an incapable married women domiciled in the State. No rule of comity requires that a non-resident should have a right of action which is denied to the citizen.

The rule which was stated in *Saul vs. His Creditors, 8 Martin 665, 5 La. Term Rep. (N. S.) 569*, that contracts cannot be enforced within a State which are in opposition to its laws, has since been followed.

In the case of *Hayden vs. Stone 13 R. I. 106*, the Court said:—"A contract valid by the laws of one State cannot be enforced in another, unless such contract made between its own citizens could be enforced there. Any other doctrine would produce confusion, some persons and acts being regulated by local laws and some by foreign laws."

In *Ruhe vs. Buck, 124 Mo. 178*, the Court say:—"The spirit of comity does not require that a non-resident shall be allowed a remedy which is, by the policy of the State law, denied to its own citizens.

Without multiplying cases, which are numerous, it is sufficient to say that the rule as here stated is held rigorously in the State of Connecticut, as shown by *Reynolds vs. Geary, 29 Conn. 176, 183*, and *Freeman's Appeal, 68 Conn. 533, 542.*

The principle of law that contracts cannot be enforced in a State which are in opposition to its laws means that such contracts cannot be enforced in any tribunal, State or Federal.

No claim that the questions in this case are determined by the application of the principles of general jurisprudence can justify a Federal court, with jurisdiction within the State, in refusing to recognize the position of the State upon this question, or in setting aside the bar which the State has established.

V.

Every question arising in this case had been fully adjudicated in the State Court in Freeman's Appeal. This adjudication, which the respondent voluntarily sought, should estop it in prosecuting the action in the Federal court. This judgment was an admitted fact in the case in the Federal court, and the

opinion of the Circuit Court of Appeals is largely a denial of the soundness of the position of the State Court in the adjudication it made.

The case of *Forsyth vs. Hammond, 166 U. S. 506, 518,* and the cases there cited hold that the Court is bound to recognize such estoppel when the judgment is brought to its attention.

Finally; the decision of the case in the Supreme Court of Errors of the State of Connecticut was by a united court, all its five judges concurring. The decision of the case in the Circuit Court of Appeals was by a divided court, two judges, only, concurring. The remaining Circuit judge dissented, sustaining the view of the judge who tried the case in the Circuit Court. The Federal judges being equally divided in the case, the judicial preponderance which over-rides the opinion of the highest court of a State is found in the difference in rank between a Circuit Court Judge and a District Court Judge while Judge of a Circuit Court.

This margin is too narrow to be satisfactory to any judicial mind and undoubtedly induced the suggestion at the close of the opinion by the Circuit Court of Appeals, that this Court might review the case on *Certiorari.*

We submit that regard for the dignity of judicial procedure and respect for the opinions of the highest Court of the State of Connecticut, as well as the gravity and importance of the case and of the questions involved in its decision, require that the case should be removed to this Court for review.

THEODORE M. MALTBIE,
of Counsel for the Petitioner.

Brief

H. WELLS [illegible],
Petitioner,

vs.

THE FIRST NATIONAL BANK OF [illegible],
Respondent.

Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

BRIEF FOR PETITIONER.

THEODORE M. KNEELAND,
CHARLES E. MITCHELL,
Of Counsel.

[illegible]

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 280.

H. DRUSILLA MITCHELL, *Petitioner.*

VS.

THE FIRST NATIONAL BANK OF CHICAGO, *Respondent.*

Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

BRIEF FOR THE PETITIONER.

STATEMENT OF FACTS.

A co-partnership, Morse, Mitchell & Williams, of which George H. Mitchell, of Bristol, Connecticut, was a member, located and in business at Chicago, Illinois, was indebted, in February, 1891, to the respondent, The First National Bank of Chicago, more than twenty thousand dollars, which indebtedness was thereafter reduced to $16,500.

On February 20, 1891, the respondent bank demanded security for the indebtedness, and said partnership agreed to procure a guaranty of the same from the petitioner, the wife of said George H. Mitchell, then at her domicile in Connecticut.

The guaranty, Record p. 6, was then filled out on a blank of the respondent bank, signed by said partnership and its individual members, at Chicago, and brought by said Mitchell to his residence in Bristol, Connecticut, where he procured the petitioner, his wife, to sign the paper, and then forwarded it, by mail, to his partner, Morse, at Chicago, who delivered it to the respondent bank.

The petitioner, at the time she signed said paper at her domicile in Connecticut, was a married woman, having been married to said George H. Mitchell, at Bristol, Connecticut, in 1857, where she then and ever since has resided; and she has been, during all her married life, under the disabilities of the common law and incapable of binding herself by contract.

Upon these facts, the Circuit Court of Appeals of the United States for the Second Circuit held that the guaranty was a valid and binding contract of the petitioner, and that she was liable for the indebtedness covered by the guaranty; while the Supreme Court of Errors of the State of Connecticut had held, upon the same facts, stated in the same words, that said guaranty was invalid and void as to the petitioner, and that the petitioner was incapable of making such a contract and that no action could be maintained against her on such contract in the State of Connecticut.

CLAIMS.

1. The alleged guaranty signed at her domicile, by a married woman, under the disabilities of the common law, is void.

2. The judgment of the state court in *Freeman's Appeal* was a final adjudication of the questions at issue in this case, and was binding and conclusive upon the parties to this action.

3. The laws and adjudications of the State of Connecticut are rules of decision in trials at common law in the federal courts having jurisdiction in the state, and should have been regarded as controlling in this case by the Circuit Court of Appeals.

4. The capacity of a married woman to execute a contract is determined by local law, by the law of the place of her domicile, or where she is sojourning.

5. The alleged contract of guaranty transgresses the laws of the State of Connecticut, and cannot be enforced by an action in any court having jurisdiction in the state.

6. No notice having been given of the acceptance of the guaranty by the respondent, it would not be binding upon Mrs. Mitchell, even if it could be validated by the law of the place of performance. The contract of waiver made at her domicile was void.

I.

Mrs. Mitchell, as a married woman, was under the disabilities of the common law when she signed the guaranty in suit at her domicile in the state of Connecticut. This was conceded in the court below.

The opinion of the Supreme Court in *Freeman's Appeal from Commissioners*, (Record, p. 32) *68 Conn. 533*, fully states the law. Speaking of Mrs. Mitchell, the court said:—"Her marriage gave her, under the laws of the state then in force, substantially the *status* which belonged to a married woman at common law. Her personal identity from a juridical point of view was merged in that of her husband. Thereafter, during coverture, she could make no contract that would be binding upon her. *I. Swift's Digest, 30.* If she assumed to make such a contract, it was absolutely void." "Whenever a peculiar *status* is assigned by law to the members of any particular class of persons, affecting their general position in or with regard to the rest of the community, no one belonging to such class can vary, by any contract, the rights and liabilities incident to this *status*." "Coverture constitutes such a *status*, and one of its incidents in this state at the time of Mrs. Mitchell's marriage was a total disability to contract."

The court also said that appointing an agent was entering into a contractual relation, and added:—"Engagements which coverture prevents a woman from making herself, she cannot make through the interposition of an agent whom she assumes to constitute as such in the state of her domicile. If this were not so, the law could always be evaded by her appointment of an attorney to act for her in the execution of contracts."

This was a statement of the existing law, and follows a long line of decisions which hold that the contracts of married women in that state are void.

Jackson *vs.* Hubbard, 36 Conn. 10, 15.
Platt *vs.* Hawkins, 43 Conn. 139.
Bank *vs.* Smith, 43 Conn. 327.
Smith *vs.* Williams, 43 Conn. 409, 418.
Way *vs.* Peck, 47 Conn. 23.
Gore *vs.* Carl, 47 Conn. 291.
Kilbourn *vs.* Brown. 56 Conn. 149.

In 1877, a statute was passed authorizing women thereafter maried to make contracts as if unmarried.

The *status* of Mrs. Mitchell, who was married in 1857, was not affected by this statute. *Freeman's Appeal*, (Opinion, Record, p. 32).

The alleged contract of guaranty by Mrs. Mitchell was not only void when signed by her at her domicile, but could not be made valid by any act of herself or any one else while she remained under the disabilities of the common law.

II.

The respondent originally brought its action in a federal court in the State of Connecticut to recover upon the alleged guaranty. (Record, p. 2). Nothing could or did prevent its prosecution of the action in that court until final judgment was reached. *Voluntarily*, it turned from that forum to the courts and proceedings of the State of Connecticut, and of its own volition, without compulsion of any kind, presented for adjudication in the state tribunals the questions and issues it was already litigating in the federal court.

It presented its claim under the guaranty to the commissioners on the insolvent estate of Mrs. Mitchell, and the claim was allowed. The trustee of the insolvent estate appealed from the action of the commissioners to the Superior Court, a court of general jurisdiction, and, thereby, vacated the judgment of the commissioners. In *Cothren's Appeal 59 Conn. 545, 548,* the court says:—"The commissioners on an insolvent estate are a legal tribunal with certain limited equitable powers, and on an appeal from their doings the judgment below is vacated, and the trial in the Superior Court is entirely independent of any action of the commissioners. It is wholly a trial *de novo.*" The judgment of the Superior Court on such appeal has the same effect as a judgment in any civil action, and is conclusive as to all matters which are in issue and determined.

> See note, Loomis *vs.* Eaton, 32 Conn. 552, approved in First National Bank *vs.* Hartford L. & A. Ins. Co., 45 Conn. 22, 42.

Under the Rules of Practice of the courts of Connecticut, the respondent, if it prosecuted its claim in the Superior Court, was required to file in that court a statement which should conform in form and substance to a complaint in a civil action, to which answer was to be filed and issues joined as in civil actions 58 Conn. 588, §5.

Statement and answer were filed and issues joined as required by such rules. (Record, p. 22). The pleadings thus made in the state court presented issues identical with those presented in the federal court, and the same facts, stated in the same phraseology, were agreed upon as the facts to be used in either forum.

The respondent permitted its case in the federal court to lie dormant while it pressed its case in the state courts to trial, and finally caused the issues presented to be passed upon by the court of last resort in the state, the Supreme Court of Errors. The decision of that court being adverse, the respondent returned to the federal court to again try the questions and issues decided in the state court, and to have, practically, the decision

of the Supreme Court of Errors of Connecticut reversed; first, by the United States Circuit Court, and, failing there, then by the United States Circuit Court of Appeals.

The respondent chose its forum, and has had its day in court, and ought not now, to be permitted to re-try the issues which have been judicially determined by a court of its own selection.

Stout *vs.* Lye, 103 U. S. 66, 71.
Grant *vs.* Buckner, 172 U. S. 232, 238.

The United States Court of Appeals assumed not only to re-try the issues, but, in effect, to declare the decision of the highest court of Connecticut erroneous, and to over-rule and set aside its judgment.

The state court having said the respondent had no cause of action and rendered judgment accordingly, the federal court reverses that judgment and directs judgment to be rendered for the respondent for the amount claimed in the state tribunal, and which it was not permitted to recover there.

As we understand the position of this court, as declared in *Forsyth vs. Hammond, 166 U. S. 506, 518*, a litigant who chooses his tribunal must abide by its conclusions, and is not at liberty, thereafter, to present the same issues in another forum in disregard of, and for the purpose of reversing the action of the selected court.

Even where the form and cause or action are different, the decision of any essential fact or question in one action is conclusive between the parties in all subsequent actions.

Cromwell *vs.*Sac County, 94 U. S. 351.
Lumber Co. *vs.* Buchtel, 101 U. S. 638.
Nesbit *vs.* Riverside Independent District, 144 U. S. 610.
Johnson Co. *vs.* Wharton, 152 U. S. 252.
Last Chance Mining Co. *vs.* Tyler Mining Co. 157 U. S. 683.

The decision of the Supreme Court of Errors in Freeman's Appeal was, practically, between the same parties upon the

same issues and was a final adjudication, and should have been respected as binding and conclusive upon the principle of *res-judicata.*

Forsyth *vs.* Hammond, 166 U. S. 520.

III.

If however, the questions in this case are still open for adjudication by the federal court, that court is required to regard the law of the State of Connecticut as the rule for its decision.

U. S. Rev. Stat., Sec. 721.

The action was not only begun and tried in a federal court sitting in that state, but the alleged cause of action had its origin within the state.

Mrs. Mitchell was a citizen of Connecticut, where she had the *status* of a married woman at common law. Whatever she did in relation to the alleged guaranty was done at her domicil in that state. It was the prerogative of that sovereignty to define her condition as to capacity or incapacity to do any act within its jurisdiction.

Story on Conflict of Laws, § § 64, 65, 66, 136.
Male *vs.* Roberts, 3 Esp. 163.
Hyde *vs.* Goodnow, 3 Coms. (N. Y.) 266.
Bank of Louisiana *vs.* Williams, 46 Miss. 618.
Union National Bank *vs.* Hartwell, 84 Ala. 379.
Dow *vs.* Gould & Curry, S. M Co., 31 Cal. 629.

This court has invariably held under like circumstances that it was the duty of the federal court to hold and administer

the law upon the subject as if it were sitting at a local court of the state.

Olcott *vs.* Bynum, 17 Wall. 44, 58.
Slaughter *vs.* Glenn, 98 U. S. 242, 245.
Taylor *vs.* Ypsilanti, 105 U. S. 60, 91.
Bucher *vs.* Cheshire R. R. Co. 125 U. S. 555.
Burgess *vs.* Seligman, 107 U. S. 20, 34, and cases cited in note.

The law of Connecticut, which declares the act of Mrs. Mitchell, in signing the guaranty, void, has existed from the first and was binding and conclusive in the federal court as well as in the state court, and the United States Circuit Court of Appeals erred in holding otherwise.

IV.

It is admitted that Mrs. Mitchell, a married woman, could not bind herself by signing the writing in suit at her domicil in Connecticut. Such attempted contract, void at its inception, could not be made a contract by delivery by a third person within that state. But it is said that such paper being sent to a third person in Illinois, where married women are authorized by statute to contract, may, by the act of such third person in delivering it there, become a valid contract.

This assumes that Mrs. Mitchell's personal presence in the State of Illinois is unnecessary to the possession and exercise of the powers conferred by its statutes upon married women, and that such statutes have an extra-territorial effect. It also assumes that she had power to enter into a contract appointing an agent, notwithstanding her utter incapacity to contract by the law of her domicil where such appointment was claimed to have

been made. It also assumes that she could confer upon such agent a capacity not only greater but one not possessed by his principal.

It is to be noted that it is not claimed that this agent was authorized to make a contract for Mrs. Mitchell under the statutes of Illinois; but only to deliver, as a contract already executed, the paper signed by her in Connecticut.

If these assumptions and claims are sound, then a person legally incapable may do that indirectly which he cannot do directly. This the law will not permit, especially in the case of married women and infants under common law disability. The disqualification is imposed upon them from motives of public policy.

Keen *vs.* Coleman, 39 Pa. St. 299.
Lowell *vs.* Daniels, 2 Gray 168.
Bodine *vs.* Killeen, 53 N. Y. 96.
Liverpool Adelphi Loan Asso., *vs.* Fairhurst 9 Exch. 422, 429.

Nor will the claim that the alleged contract was to be performed in Illinois avail to give it validity. The capacity of Mrs. Mitchell to contract while at her domicil is determined by the law of her domicil. *Story*, on *Conflict of Laws*, § *64*.

By reason of her disability, she was incapable of giving an effectual consent to the alleged contract. The intent of a married woman, not *sui juris*, cannot be considered in determining the locality, validity, extent, or force of any contract she may attempt to make. In the language of the court in Hager *vs.* National German Bank, 105 Georgia, 116, 119, "the laws of the place of performance of a contract cannot be called to the aid of a person who is seeking to enforce, as a contract, something which is absolutely void at the place where it was executed."

Yale *vs.* Dederer, 22 N. Y. 450.
Cooper *vs.* Cooper, 13 App. Cases L. R. 88.

In the last case, an infant domiciled in Ireland executed there an ante-nuptial contract, with the intention, upon her marriage, of removing immediately to Scotland, where she had capacity to make such contract, and of residing there permanently. Upon marriage, she removed to Scotland and resided there during her married life. *Held*, that the capacity of the appellant to bind herself must be determined by the law of her domicil, and that by that law, she could not, as an infant, incur an obligation that was not shown to be for her benefit, and that she was not bound by the contract. Halsbury L. C. p. 99, said: It is said that the familiar exception that the law of the place where a contract is to be performed governs it, prevents the application of the general rule, and that as both parties contemplated a Scottish married life, and, as a consequence, a Scottish domicil, the principle I have stated does not regulate the contract relation of these parties. The overwhelming answer to this is that the argument assumes a binding contract, and, if one of the parties was under incapacity, the whole foundation of the argument fails. Lord Watson added, p. 106, "The principle of private international law which makes, in certain cases, the law of the place where it is to be performed the legal test of the validity of a contract, rests, in the first place, upon the assumption that the parties were, at the time they contracted, both capable of giving an effectual consent; and in the second place upon an inference derived from the terms of the document, or from the circumstances of the case that they mutually agreed to be bound by the *lex loci solutionis* in all questions touching its validity. This principle can have no application where one of the parties, at the time when they professed to contract, was incapable of giving consent by the law of the party's domicil and also of the place of contracting." Lord Macnaghten, p. 108, "It is difficul to suppose that Mrs. Cooper could confer capacity upon herself by contemplating a different country as the place where the contract was to be fulfilled or contracting in view of an alteration of personal *status* which would bring with it a change of domicil."

The English law, as stated in *Cooper vs. Cooper*, is identical with the rule universally recognized in this country.

Hager vs. Bank 105 Ga. 116, was an action upon a note dated at St. Paul, Minn., and payable at defendant bank in said St. Paul, and was signed, as surety, by the plaintiff, at her domicil in Tennessee, she being a married woman under common law disabilities. The court held that the capacity of the defendant to bind herself by a contract of the character under consideration must be determined by the law of Tennessee. She was domiciled in that state, and the note sued on was executed there. "A married woman incapacited by the law of her domicil to bind herself by a promissory note cannot be made liable on such a note because of the fact, though executed at the place of residence, it was made payable in another jurisdiction where she would be authorized by the law to make such a contract."

In *Pearl vs. Hansborough and wife, 9 Humph. 426, 431*, the court states the fact as follows: Mrs. Hansborough being a *feme covert* did, on May 9, 1843, *in the County of Williamson, State of Tennessee*, contract with her father, Ewen Cameron, to buy of him the five slaves in controversy, and, in pursuance of such contract, she did execute to him her notes; one, for five hundred dollars, and one for seven hundred and fifty dollars; as a consideration for the deed to her of said slaves, etc. Although by the law of Mississippi, where Mrs. Hansborough was domiciled, she might have made such contract, the court says, p. 435, the whole contract is void and no rights have been acquired by any one under it. The contract was made in Tennessee where a *feme covert* is incapable of contracting, and all her contracts are void.

So in *Wright vs. Remington, 41 N. J. Law, 48*, it was held that a contract signed by a married woman at her domicile in Illinois, where, by statute, she was authorized to make such contract, was valid and could be enforced in New Jersey, although if she had been domiciled and had signed the contract in the latter state, it would have been void. The law of Illinois, the

law of domicil and place of contracting, determined the capacity of the married woman, and the validity of the contract.

See also Thompson *vs.*Ketcham, 8 Johns (N. Y.) 189.
Andrews *vs.* Herriott, 4 Cowen 570 (N. Y.)
Hill *vs.* Pine River Bank, 45 N. H. 300.
Bank of Louisiana *vs.* Williams, 46 Miss. 618.
Dow *vs.* Gould & Curry S. M. Co., 31 Cal. 629.
Union National Bank *vs.* Hartwell, 84 Ala. 379.
Gibson *vs.* Sublett, 82 Ky. 596.
Robinson *vs.* Queen, 87 Tenn. 445.
Spearman *vs.* Ward, 114 Pa. St. 634.
Wood *vs.* Wheeler, 111 N. C. 231.
Armstrong *vs.* Best, 112 N. C. 59.
Ruhe *vs.* Buck, 124 Mo. 178.
Bank *vs.* Partree, 99 U. S. 325, 330.
Freeman's Appeal, 68 Conn. 533.

In all these cases, the doctrine stated in Story on *Conflict of Laws*, § *64*, that the validity of the acts of a married woman at her domicil are determined by the law of her domicil is approved. In some of them it is said that her *status* at her domicil does not accompany her to another jurisdiction, and that the validity of her acts and contracts while personally in a foreign country are determined by the laws of that country. The divergence in the views of commentators on private international law relates solely to this latter proposition.

Story, Conflict of Laws, §§ 66, 66a, 136, etc.
2 Kent's Commentaries 233 note, 458, 459 note.

The opinion in *Milliken vs. Pratt, 125 Mass. 374*, discusses this question whether the law of domicil or that of sojourn shall determine the capacity of infants and married women, and cites numerous cases to show that it is determined by the law of the place of personal sojourn and action. The cases cited all sustain the contention of Mrs. Mitchell, and where their facts are analogous are cited upon this brief. That case, decided in 1878, turned upon the effect of a statute of Massachusetts, removing the common law disabilities of married women, on an attempted contractual act of a married woman at her domicil

in the state, prior to its enactment. The question related to an act of a citizen of the state within its territory, the legislation and policy of the state, and was entirely local in its character. The court says:—"In Massachusetts, even at the time of the making of the contract in question, a married woman was vested by statute with a very extensive power to carry on business by herself, and to bind herself by contracts with regard to her own property, business and earnings; and, before the bringing of the present action, the power had been extended so as to include the making of all kinds of contracts, with any person but her husband, as if she were unmarried. There is therefore no reason of public policy which should prevent the maintenance of this action." The existence and force of the rule for which we contend is stated, p. 383. "It is possible also that in a state where the common law prevailed in full force, by which a married woman was deemed incapable of binding herself by any contract whatever, it might be inferred that such an utter incapacity, lasting throughout the joint lives of husband and wife, must be considered as so fixed by the settled policy of the state, for the protection of its own citizens, that it could not be held by the courts of that state to yield to the law of another state in which she might undertake to contract." It is proper to remark that in *Milliken vs. Pratt* no authorities are cited to sustain the proposition that an incapable person can sign a paper at her domicile, where she is incapacitated, and, by sending it to another state, by mail or messenger, make it a valid contract. The cases which are cited all relate to persons possessing capacity to contract at the place where the paper is signed.

A large number of the cases cited by us are much more recent than *Milliken vs. Pratt*, and state the rule more clearly and emphatically, and fully sustain the position of the Supreme Court of Connecticut in *Freeman's Appeal.*

In no instance has a court of last resort, in any state, taken any other view than that for which we contend. The cases of *Baum vs. Birchall, 150 Pa. St. 164*, and *Hill vs. Chase, 143 Mass. 129*, cited by the respondent are not in point as they present the question whether an incapable married woman was

liable upon contracts for the benefit of herself or her estate. The first case held that an incapable married woman who purchased and had conveyed to her a farm in Delaware was liable on a bond she had given for the purchase price. The other case held that an incapable married woman who borrows money for her own use is liable for the amount in an action at law in Massachusetts. In each case, the liability could have been established under the common law by a proceeding in equity.

We have omitted mention of *Bell vs. Packard, 69 Me. 105*, because the case turns upon allegations of fraud on the part of the married woman. That the decision was an arbitrary exercise of judicial power is shown by its concluding paragraph. The court speaking of a letter to the husband of the incapable married woman says:—"The plaintiff's letter called for a 'good surety' to the note. By the execution and delivery of it, the makers must be presumed to have intended a *bona fide* and not a *mala fide* compliance with the proposition. But if the note was made in Massachusetts, and intended to be payable there, then it was illegal and void, and an intended fraud by the makers, since they must be presumed to know the law of their domicile; whereas, if made or intended to be paid in this state, it would be legal and valid. It should, therefore, in the absence of any legal principle forbidding it, be considered as intended by the parties to have been made with reference to the place where legal." This ground for the liability of an incapable married woman has not been stated by any other common law court, and contravenes the accepted rule stated in *Liverpool Adelphi Asso. vs. Fairhurst, 9 Exch. 422.*

The respondent says that the question at issue is "whether the doing of a given act requires contractual ability, and is to be settled by the application of general principles of law in force everywhere." Obviously, if the given act resulted in, or was essential to, the making of a valid contract, as is asserted, then the doing of it requires contractual ability.

The court below says that the question is "whether the incapacity to contract by the law of the state of a person's dom-

icile attaches to his contractual act in another state where the disability has been removed." This statement assumes that Mrs. Mitchell did a contractual act in Illinois, where her disability had been removed. Mrs. Mitchell was not even transiently in the State of Illinois, when or after she signed this guaranty. Signing the guaranty was her only act, and this was done in the State of Connecticut. Her disabilities were not, and could not be removed, or even temporarily suspended by the laws of Illinois. The court must have held that the local laws of Illinois operated upon the person of Mrs. Mitchell while she was within the State of Connecticut, thus giving to those laws an extra-territorial effect.

We say the paramount question is whether Mrs. Mitchell can have the safeguards and protection which the common law provides and which the State of Connecticut has maintained for her and in her interest or whether the statute law of another State can, while she is at her domicile in Connecticut, change the *status* which its laws give her.

Illinois and Connecticut have the common law as the basis of their jurisprudence, and in each the incapacity of married women to make contracts was originally recognized. While in Connecticut their common law disabilities are in full force as to those married prior to 1877, in Illinois these disabilities have been entirely removed. If then, this contract of guaranty is valid as to Mrs. Mitchell, it must be so because the laws of Illinois confer upon her the power to make such contract or do some act from which a contract results. It is the statute law of Illinois which invades the territory of Connecticut, and practically removes the common law disabilities of its married women.

This court, upon this general question in *Grover & Baker Machine Co. vs. Radcliffe, 137 U. S. 287, 296*, cites Judge Story with approval, as follows:—"No sovereignty can extend its process beyond its own territorial limits, to subject other persons or property to its judicial decisions. Every exertion of authority beyond these limits is mere nullity, and incapable of binding such persons or property in other tribunals. Such is

the familiar, reasonable and just principle of the law of nations; and it is scarce supposable that the framers of the Constitution designed to abrogate it between states which were to remain as independent of each other, for all but national purposes, as they were before the revolution. Certainly it was not intended to legitimate an assumption of extra-territorial jurisdiction which would confound all distinctive principles of separate sovereignty."

V.

If, however, the court should be of opinion that the questions in this case are open, and that the alleged contract was constructively made or was to be performed in Illinois and by the operation of the laws of that state was a valid contract, binding upon Mrs. Mitchell, then arises the question whether a recovery can be had thereon in a federal court sitting in Connecticut.

This court said in *Cooper Manufacturing Co. vs. Ferguson 113 U. S. 727, 733*:—"It must be conceded that if the contract on which the suit was brought was made in violation of the law of the state, it cannot be enforced in any court *sitting in the state* charged with the interpretation and enforcement of its laws."

The Supreme Court of Connecticut said in regard to this question in *Freeman's Appeal 68 Conn. 533, 542*, (Record, p. 35): —"No principle of comity can require a state to lend the aid of its courts to enforce a security which rests on the transgression of its own laws, by one of its own citizens, committed within its own territory. Such was, in effect, the act by which Mrs. Mitchell undertook to do what she had no legal capacity to do."

The Connecticut Court in that opinion followed the rule stated in *Reynolds vs. Geary, 26 Conn. 179, 183*:—"Giving in this state effect to the laws of another state or foreign country is wholly an act of comity and not a recognition of a right. This comity will not be extended here if the foreign law or contract is prohibited here, or is contrary to the policy of our laws. We cannot give to the citizens of another state any higher privileges than we give our own citizens."

Comity is an act of courtesy on the part of the state, and can be extended in the courts of the United States only with the consent of the state and when its exercise is consistent with the interests and policy of the state.

In *Bank of Augusta vs. Earle, 13 Pet. 519, 589*, this court held, citing Story on "Conflict of Laws," that it was not comity of the courts but the comity of the state which is administered, and ascertained in the same way and guided by the same reasoning by which all other principles of municipal law are ascertained and guided. It is the voluntary act of the state by which it is offered, and inadmissible when contrary to its policy or prejudicial to its interests.

In *Mahon vs. Justice, 127 U. S. 700, 706*, this court says:—"By comity nothing more is meant than that courtesy on the part of one state by which, within her territory, the laws of another state are recognized and enforced, or another state is assisted in the execution of its laws. From its nature, the courts of the United States cannot compel its exercise when it is refused by the state; it is admissible only upon consent of the state, and when consistent with her own interests and policy.

In the state of Illinois, the same rule prevails. In *Pope vs. Hanke, 155 Ill. 617, 628*, the court says:—"Comity between different states does not require a law of one state to be executed in another state when it would be against the public policy of the latter state. No state is bound to recognize or enforce contracts which are injurious to the welfare of its people or which are in violation of its own laws;" quoting *Faulkner vs. Hyman, 142 Mass. 53, 54* where the court, Devens, J. says:—"The law

of any state has no force or effect, *proprio vigore*, beyond its territorial limits. Whatever extra-territorial validity it may have is owing to the comity which should prevail between different states or nations. That comity does not require that it should be executed when it would be against the public policy of the state where the remedy is sought, or would be injurious to the just interests of its citizens."

In *Rhodes vs. Missouri Loan and Savings Co. 173 Ill. 621*, the court says:—"The rule of comity does not require that we should allow foreign corporations to enforce contracts here, if such enforcement would be in conflict with our laws, and, being thus in conflict, the enforcement thereof would work against our own citizens, and give to the citizens of another state an advantage which the resident has not." Then again the court says:—"Comity does not take place by any foreign state when it would be incompatible with its own authority or prejudicial to the interests of its own subjects."

Dawes *vs.* Rosenbaum, 179 Ill. 112.

The cases which follow state the same rule.

In *Saul vs. His Creditors, 5 Martin, N. S. 569*, the Louisiana court said:—"Contracts cannot be enforced to the injury of a state whose aid is required to carry them into effect; nor where they are in opposition to the laws of that state. In the conflict of laws where it is doubtful which should prevail, the court that decides should prefer the laws of its own country to that of a stranger."

In *Hayden vs. Stone, 13 R. I. 106*, the court says:—"A contract valid by the laws of one state cannot be enforced in another, unless such a contract made between its own citizens could be enforced there. Any other doctrine would produce confusion, some persons and acts being regulated by local laws and some by foreign laws."

See also Case *vs.* Dodge, 18 R. I. 661.

In *Ruhe vs. Buck, 124 Mo. 178*, already cited, the court says:—"The spirit of comity does not require that a non-resident shall be allowed a remedy which is, by the policy of the state law, denied to its own citizens."

In *Armstrong vs. Best, 112 N. C. 59*, the court says:—"The common law disabilities of married women still obtain in this state, and her promise is as void as it ever was, except in cases provided by statute. If the contract which is the subject of the action was made in this state, it would be void. The contract was, undoubtedly, valid in the state where made, but it cannot be enforced here because of a very important qualification of private international law; and this is that no state or nation will enforce a law which is contrary to its fixed and settled policy."

In many of the cases cited, the issue related to married women under common law disabilities, or where that disability had been modified by statute, and fully support our contention. Even in the case of *Miliken vs. Pratt, supra*, the rule, as stated, is recognized, and it is declared that it would be binding and conclusive in states such as Connecticut, where the common law disabilities of married women are in force. The deduction from all the foregoing cases is that if the alleged guaranty is valid and binding upon Mrs. Mitchell it cannot be enforced against her in any court having jurisdiction in the state of Connecticut.

VI.

There was no notice to Mrs. Mitchell by the bank of the acceptance of the proposed guaranty or of credit given under it.

The writing signed by Mrs. Mitchell was in the nature of a request to the bank to continue credit to the firm of Morse, Mitchell & Williams. It reads:—

"We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they desire from time to time," and then it states that, "in considera-

tion of all and any such credit given, we hereby guarantee any and all indebtedness now due or which may hereafter become due," etc.

To make the contract of guaranty binding upon Mrs. Mitchell, there must have been an acceptance of the request on the part of the bank, and notice of such acceptance, and notice, also, of credit given under it.

Craft *et al vs.* Isham, 13 Conn. 28.
New Haven County Bank *vs.* Mitchell, 15 Conn. 206.
Adams *vs.* Jones, 12 Pet. 207.
Cooke *vs.* Orne, 37 Ill. 186.
Davis *vs.* Wells, 104 U. S. 159.
Davis Sewing Machine Co. *vs.* Richards, 115 U. S. 524.

There are only two possible grounds upon which notice of such acceptance to Mrs. Mitchell could be dispensed with. One is, that prior negotiations had been had between the bank and signers of the guaranty, which made such notice unnecessary; and the second is, that there was an express waiver of such notice in the contract itself.

It is true that the record finds that the bank had agreed with the firm of Morse, Mitchell & Williams to continue the line of credits upon the execution of the guarantee by said firm and its individual members and by Mrs. Mitchell; but this agreement was not made with Mrs. Mitchell, a stranger to the firm, nor does the record find that it had ever been communicated to her by anybody. So far as she is concerned there is a simple request contained in the instrument itself to give credit, and no knowledge or intimation as to whether it will be complied with or not.

The bank, who prepared the guaranty, knew of the necessity of notice of acceptance, and therefore provided in the instrument itself that the signers should

> "waive notice of the acceptance of the guaranty and of any and all indebtedness at any time covered by the same."

Here, then, we have a contract within a contract; a contract of guaranty and a contract of waiver. Mrs. Mitchell was in Connecticut when she attempted to make the contract of waiver, and in the absence of the waiver, notice would have had to be given her in Connecticut of acceptance, for this was the place of her domicile, and the place where she actually was. This part of the contract could not be made anything else than a Connecticut contract. By the law of Connecticut, the contract of waiver was void, for a married woman nad no power to make any such waiver, and if the waiver itself was void, then the whole contract falls for want of acceptance and notice.

We submit that the Circuit Court of Appeals erred in holding that the decision by the Supreme Court of Errors of Connecticut in *Freeman's Appeal* was not in harmony with cases in other jurisdictions; that the judgment in *Freeman's Appeal* was not conclusive upon the parties in this case; that the federal courts having jurisdiction in the state in a common law action could disregard the laws of the state and could exercise comity where it was refused by the state and its courts.

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Sup. Ct. 45.

Supp. Brief of Maltbie & Mitchell for Petitioner.

Supreme Court of the United States.

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H. DRUSILLA MITCHELL,
PETITIONER,

VS.

THE FIRST NATIONAL BANK OF CHICAGO,
RESPONDENT.

Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

SUPPLEMENT TO BRIEF FOR PETITIONER.

THEODORE M. MALTBIE,
CHARLES E. MITCHELL,
Of Counsel.

HARTFORD, CONN.:
Press of THE HARTFORD PRINTING COMPANY,
(ELIHU GEER SONS.)
1900.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 280.

H. DRUSILLA MITCHELL, *Petitioner*,

vs.

THE FIRST NATIONAL BANK OF CHICAGO,

Respondent.

Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

SUPPLEMENT TO

BRIEF FOR THE PETITIONER.

In response to a suggestion at the former argument of this case, we submit this further statement as to the statutes of Connecticut relating to the disabilities of married women.

An act was passed, in 1872, and has since continued in force, which provided that:

> "Actions at law may be sustained against any married woman upon any contract made by her upon her personal credit for the benefit of herself, her family, or her estate." *General Statutes of Conn.*, § 984.

The effect of this statute was to give an action at law against married women in cases where a proceeding in equity against her property could previously have been maintained.

In 1873, this act was held to have this effect, by the Supreme Court, in *Buckingham vs. Moss, 40 Conn. 461, 463*, where the court, speaking of this statute, says:—"The act of 1872 was not intended to create, and we think did not create, any new liability. It imposes no duty, no obligation, which did not previously exist. It simply changes the form of the remedy. The party plaintiff in cases of this kind is authorized to proceed on the law instead of the equity side of the court."

In order to maintain an action at law under the authority of this statute, it is indispensable to allege in the complaint that the contract was made for the benefit of the person, family or estate of the married woman.

In 1878, in *Smith vs. Bank of New England, 45 Conn. 416*, the court say:—"The alterations made by the statutes relative to married women constitute exceptions to the general rule, and the allegations in the declaration must explicitly bring the case within one of the exceptions" * * * "the want of such allegation makes the declaration fatally defective." This was held to be the law on a motion in arrest of judgment after verdict.

In 1879, in *Way vs. Peck, 47 Conn. 23, 24*, the court, in discussing this statute, said:—"The facts appearing of record must bring the case within the provisions of the statute which makes a married woman liable upon any contract made by her since her marriage upon her personal credit for the benefit of herself, her family, or her separate or joint estate."

The court also said, in 1879, in *Gore vs. Carl, 47 Conn. 291*, —"It is not the purpose of this act to remove all defences standing about a married woman and leave her and her estate responsible for any and every contract she can be persuaded to enter into."

The last three cases were decided after the passage of the act of 1877, and while it was in force, and related to the capacity of women married prior to that time. The act of 1877 applied only to "*marriages on or after April 20, 1877*," (General Statutes, § 2796,) and did not enlarge the capacity of Mrs. Mitchell, who was married in 1857. *Opinion of Supreme Court of Errors of Connecticut, Record, p. 33.*

The counsel of the respondent, in their brief, p. 10, say that this is "Not a question whether Mrs. Mitchell can make a contract of guaranty in Connecticut. We do not claim that she could." In view of these decisions and the concession of the respondent, this court must hold that Mrs. Mitchell was absolutely incapable of binding herself by contract, and especially by a contract of guaranty, within the state of Connecticut.

The parties are agreed in this case as to the facts and the law of Connecticut: — *Record p. 27.*

1. That Mrs. Mitchell signed the contract in suit at her domicil in Connecticut.

2. That she did so at the request of her husband, who was one of the firm of Morse, Mitchell & Williams, and who brought the paper to her, secured her signature, took it away, and mailed it to Chicago.

3. That Mrs. Mitchell was incapable of making such a guaranty in Connecticut, and that the alleged contract was void, under the laws of that state.

We might add that it does not appear that Mrs. Mitchell had anything to do with the delivery or disposition of the alleged guaranty, and it is admitted that the respondent gave no additional credit on account of it.

The respondent bank was a party to the arrangement to procure Mrs. Mitchell to sign the proposed guaranty at her domicile in Connecticut, and was put upon inquiry as to her capacity, and must have known her disabilities as a married woman in

Connecticut. The finding of facts *(Record, p. 27, par. 6,)* states that an agreement between the respondent bank and the debtor partnership was made at Chicago, Mrs. Mitchell having no knowledge thereof, by which the guaranty, prepared by the bank, upon its form, should be taken to Mrs. Mitchell, whom the bank knew to be a married woman and to be at her domicile in Connecticut, and, in that state, she should be procured to sign the same.

The claim of the respondent is that the void paper became a valid contract in Illinois, binding upon Mrs. Mitchell by force of the statute of that state, which provides that "Contracts may be made and liabilities incurred by a wife and the same enforced against her to the same extent and in the same manner as if she was unmarried." This statute is entirely personal in character, and limited in its operation to the territory of Illinois, and can have no extra-territorial effect. It could not confer capacity upon Mrs. Mitchell while she was in Connecticut, and without possession of capacity by her, no contract could exist. Judge Story says in his *Conflict of Laws*, § 7, "It is plain that the laws of one country can have no intrinsic force *proprio vigore*, except within the territorial limits and jurisdiction of that country. They can bind only its own subjects and others who are within its jurisdictional limits; and the latter only while they remain therein."

So long as she continued incapable of making the contract of guaranty, no manipulation of the signed paper in Illinois, by other persons, could give it validity as a contract. This court, in discussing another question in *Fire Ins. Asso. vs. Wickham, 141 U. S. 564, 579*, said "to constitute a valid agreement there must be a meeting of minds upon every feature and element of such agreement." Manifestly, a person incapable of contracting could not assent to a contract, and there could not be a meeting of minds.

Carson vs. Clark, 2 Ill. 115.
Toledo, etc. R. R. Co. vs. Lamphear, 54 Mich. 575.

The case of *Milliken vs. Pratt, 125 Mass. 374*, upon which the respondent relies, turned upon the effect of a statute of Mass., passed in 1874. The guaranty was signed before the enactment of the statute, and suit brought subsequent thereto. The court say, *p. 376*, "The law of Maine authorized a married woman to bind herself by any contract as if she were unmarried. *St. of Maine of 1866, c. 52. Mayo vs. Hutchinson, 57 Maine, 546.* The law of Massachusetts, as then existing, did not allow her to enter into a contract as surety or for the accommodation of her husband or of any third person. *Gen. Sts. c. 108, § 3. Nourse vs. Henshaw, 123 Mass. 96.* Since the making of the contract sued on, and before the bringing of this action, the law of this commonwealth has been changed, so as to enable married women to make such contracts. *St. 1874, c. 184. Major vs. Holmes, 124 Mass. 108. Kenworthy vs. Sawyer, ante, 28.*" Then, in stating the question to be decided, the court says: *p. 377.*—"The question therefore is, whether a contract made in another state by a married woman domiciled here, which a married woman was not at the time capable of making under the law of this commonwealth, but was then allowed by the law of that state to make, and which she could now lawfully make in this commonwealth, will sustain an action against her in our courts."

In Connecticut there is no counterpart of the statute which was essential to this Massachusetts decision; in fact, was the reason and occasion for its being rendered.

It is proper to remark that the cases cited in the opinion as authorities for the power to contract by agent, messenger or letter, all concern parties of full capacity; no authority is or can be cited which holds that an incapable person, in the country of such incapacity, could appoint an agent, or contract by messenger or letter. Twenty-two years have elapsed since *Milliken vs. Pratt* was decided. During this period a very large number of cases involving questions relating to the capacity of married women or infants have been decided by the courts of last resort in the several states, the exponents of the common law in this country. These decisions invariably sus-

tain the view stated by the Supreme Court of Errors of Connecticut in *Freeman's Appeal, 68 Conn. 533, (Record, p. 33.) See cases cited pp. 12, 13, Petitioners principal brief.*

The tenacity with which these state courts adhere to the established rules of the common law relating to the disabilities of married women is illustrated by the action of the Supreme Judicial Court of Massachusetts in reference to a reservation contained in the statute of 1874, which statute was the basis of the decision in *Milliken vs. Pratt.* The reservation provides that "nothing in this act shall authorize a married woman to convey property to or make contracts with her husband." *Mass. St. 1874, c. 184.* It was said in *Fowle vs. Torrey, 135 Mass. 87, 90,* that "whatever rights they (married women) had in this respect remain as they stood at common law before this legislation commenced." The case of *National Granite Bank vs. Whicher, 173 Mass. 517,* (1899), was an action on three promissory notes, signed by the defendant, a wife, payable to the order of her husband, and endorsed by him and other persons, and discounted by the plaintiff bank. The Court said:—"That such a note is void by common law, which law has not been changed by our statutes relating to married women, is too plain for argument. *Gay vs. Kingsley, 11 Allen 345.* Nor does it make any difference that the note after being indorsed by the husband is given to a person in payment of a debt of hers to him. *Roby vs. Phelon 118 Mass. 541.*" The conclusion is "that the notes in suit having been made by a wife payable to the order of her husband no action could be maintained against her upon them."

The language used by the Massachusetts court is almost identical with that used by the Connecticut court in *Freeman's Appeal,* in holding the alleged guaranty void.

Further, the court say that:—"*In Slawson vs. Loring, 5 Allen 340,* on which the plaintiff chiefly relies, it was held that an indorsement of a draft from a husband to his wife and her

subsequent indorsement of it with his assent to a third person were sufficient to vest in the latter a valid title. This case as an authority has been limited to its particular facts."

Clearly, if these absolutely void notes had been discounted by a bank located in the state of Maine, they would not have become, by force of the law of Maine, valid obligations which could be enforced in the courts of Massachusetts. They would still have been void and their enforcement in the courts of Massachusetts would have been against the settled policy and law of the state, and not required by rules of comity.

Practically, if an incapable married woman, at her domicile, by signing a paper and sending it to a state where married women are capable of contracting, may make a valid contract which can be enforced against her in the state of her domicile and incapacity, then the disability is not of the *feme covert*, but of the territory of the state and its citizens within which she resides.

The Circuit Court of Appeals in its opinion in this case, two judges concurring and Judge Lacombe dissenting, not only found error in the judgment of the Circuit Court, but also reviewed and practically found error in and overruled the decision and unanimous opinion of the Supreme Court of Errors of Connecticut upon all the questions involved in this case, which last decision was given at the invitation of the respondent by the state court in *Freeman's Appeal, (Record, p. 33.)* That adjudication by the Connecticut Court, has been the subject of consideration at every stage of the proceedings in this case in the federal courts. It was before the Circuit Court, and was fully considered in all its aspects. It was before the Circuit Court of Appeals, and is the one subject which that court considered. It is here before this court in a full and exemplified copy of the record in the state court, made a part of the record here. Now, while it probably is true that the conclusions of the Connecticut court, in *Freeman's Appeal* are not a sufficiently formal judgment to be the basis of an action, or to be plead

in bar to further proceedings, yet, upon issues that were precise and clear, certain questions were adjudicated. The rule is that the decision of any essential question in one action is conclusive between the parties in all subsequent actions.

Cromwell *vs.* Sac County, 94 U. S. 351.
Lumber Co. *vs.* Buchtel, 191 U. S. 638.
Nesbit *vs.* Riverside Independent District, 144 U. S. 610.
Johnson Co. *vs.* Wharton, 152 U. S. 252.
Last Chance Mining Co. *vs.* Tyler Mining Co., 157 U.S. 683, cases cited, p. 7, Petitioner's principal brief.

These adjudicated questions constitute an estoppel, and, as we understand, may be offered in evidence without being specially plead. The decision of these questions can only be used to shut off an action or defense, and stand upon the same ground as an estoppel *in pais*.

S. Pacific R. R. Co. *vs.* United States 168 U. S. 1, 48, 49, 59.
Plumb *vs.* Curtis, 66 Conn. 154, 173.
Bell *vs.* Raymond, 18 Conn. 91, 97.

The opinion of the Circuit Court of Appeals says:—In "*Freeman's Appeal*, he court conceded it (the alleged guaranty) was a contract made in Illinois" (Record, p. 18.) This is incorrect, as the purpose of the opinion in *Freeman's Appeal* was to declare that Mrs. Mitchell was incapable of making a contract and that the alleged guaranty was void. (Record, p. 32.) Judge Wallace also says "that the state court did not consider the contract one which ought not to be enforced because violative of the policy of the state." This is also error, as the state court, although denying that any contract existed, still said that "no principle of comity can require a state to lend the aid of its courts to enforce a security which rests on the transgressions of its own law by one of its own citizens committed within its own territory." (Record, p. 35.)

This was an emphatic declaration of the position of the

state and of its policy in reference to contracts of this character; and that no rule of comity required their enforcement in the State Courts. The rule in reference to the exercise of comity in the state was first stated in *Vermont State Bank vs. Porter, 5 Day 316, 320, (1812)*, and is reiterated in *Vanbuskirk vs. Hartford Fire Ins. Co., 14 Conn. 583, 587, (1842)*, where the court say: "The rule that the law of one nation will be carried into effect in the territories of another is, however, subject to some exceptions. The only one which can have any application to this case, is, that it will not be allowed to prevail where it will be manifestly injurious to the state where it is sought to be enforced, or to its citizens. Whether the adoption of it will be thus injurious in its consequences, is, for the Courts of such state, in the exercise of a sound judicial discretion, to determine."

The rule in Connecticut is the same as that in *2 Kent's Commentaries, (12 Ed.) 455, 457, 458*, that "A contract valid by the law of the place where it is made is, generally speaking, valid everywhere *jure gentium* and by tacit assent." "It is, however, a necessary exception to the universality of this rule, that no people are bound to enforce or hold valid in their courts of justice any contract which is injurious to their public rights or offends their morals or contravenes their policy or violates a public law." Then again, "Every independent community will judge for itself how far the *comitas inter communitates* is to be permitted to interfere with its domestic interests and policy."

"No state is bound to give effect to the law of a foreign state when to do so will prejudice either the rights of its citizens or the interests of the state; but, on the contrary, each state is bound to give its citizens the full benefit of all the remedies and securities provided by its laws."

Receiver vs. First National Bank, 34 N. J. Eq. 450.

In *Bliss vs. Brainard, 41 N. H. 256, 261*, the rule is thus stated:—"Generally speaking, the validity or invalidity of a

contract is to be determined by the law of the place where it is made. If valid there, it is, by the general law of nations, held to be valid everywhere, by the tacit or implied consent of the parties; if void or illegal there, as a general rule, it is held void and illegal everywhere. The exception to this rule as to the validity of the contract is, that contracts which are in evasion or fraud of the laws of the country, or of the rights or duties of its subjects; which are against good morals, or against religion, or against public rights; and those opposed to the national policy or national institutions; are deemed nullities in every country affected by such considerations, though they may be valid by the laws of the place where they are made. But if a contract is void in its origin, it seems difficult to find any principle upon which any subsequent validity can be given to it in any other country.

Story, "Conflict of Laws," §§ 242–244, and authorities cited;

Andrews *vs.* Herriot, 4 Cow. 508 and note to page 510;

2 Kent Com. 457, and notes;

Whitney *vs.* Whitney, 35 N. H., 457, and authorities.

Hilton vs. Guyot, 159 U.S. 113, 166.

The Connecticut Court, in *Freeman's Appeal*, stated the law and the rules of comity as they have existed for a hundred years, and now exist, in Connecticut, and this statement must be accepted as conclusive. No question can be made as to the absolute incapacity of Mrs. Mitchell during the entire period of coverture, and that any contract she might attempt to make would be absolutely void; and that such a contract could not be enforced in that state under any rule of comity. The rule of comity is determined by the state, and the federal courts with jurisdiction in the state are required to conform to such rule.

Mahon vs. Justice, 127 U. S. 700, 706.

See cases cited in Petitioner's principal brief, pp. 17-20.

If, despite the opinion and judgment of the Connecticut court, this court holds that the Illinois statute made this signed paper a guaranty binding upon Mrs. Mitchell in Connecticut,

we submit that, as such a contract contravenes the law and settled policy of Connecticut, and could not be enforced in the courts of that state, it cannot be enforced in a federal court sitting in that state.

This court, in *Smith etc. vs. McGroarty, 136 U. S. 237, 241,* discussing the validity of a conveyance, said:—"It would be an extraordinary result, if the courts of the United States, in exercising the jurisdiction conferred upon them with a view to secure the rights of citizens residing in different states, should hold such a conveyance to be valid against citizens of other states as the Supreme Court of Ohio holds to be void as against its own citizens." See also Cross *vs.* Allen, 141, U. S. 528, 538.

Would not the result also be extraordinary if a federal court should hold a writing to be a contract in Connecticut in favor of citizens of other states, which its Supreme Court of Errors had declared not to be a contract and void as against one of its own citizens, and a transgression of the laws of the state. Would not the result be more extraordinary if the federal court should judicially approve the violation of the state law and sovereignty, and afford to citizens of other states a right of action which did not exist in favor of the citizens of the state, or in favor of any one in the state courts.

THEODORE M. MALTBIE,
CHARLES E. MITCHELL,
Of Counsel.

No. 205. 45

Br. of Case for Respondent.

Supreme Court of the United States.

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H. DRUSILLA MITCHELL, Petitioner,

vs.

THE FIRST NATIONAL BANK OF CHICAGO, Respondent.

Petition for a writ of Certiorari to United States Circuit Court of Appeals for the Second Circuit, in the case of The First National Bank of Chicago, Plaintiff in Error, vs. H. Drusilla Mitchell, Defendant in Error.

Statement and Brief

FOR RESPONDENT.

CASE & BRYANT of Counsel.

HARTFORD, CONN.:
THE CASE, LOCKWOOD & BRAINARD COMPANY, PRINTERS
1899.

Supreme Court of the United States.

October Term, 1898.

H. DRUSILLA MITCHELL, Petitioner,

vs.

THE FIRST NATIONAL BANK OF CHICAGO, Respondent.

Petition for a writ of Certiorari to United States Circuit Court of Appeals for the Second Circuit, in the case of The First National Bank of Chicago, Plaintiff in Error, vs. H. Drusilla Mitchell, Defendant in Error.

Statement and Brief

For Respondent, Plaintiff in Error.

STATEMENT.

On the 30th day of December, 1895, the First National Bank of Chicago brought suit against H. Drusilla Mitchell and G. H. Mitchell, her husband, both of Bristol, Conn., in the Circuit Court of the United States for the District of Connecticut, claiming $30,000 damages. This suit was commenced by writ of summons and attachment, and by virtue of said writ, property of the said H. Drusilla Mitchell amply sufficient to secure the claim was levied upon.

The facts upon which said suit was brought are as follows: H. Drusilla Mitchell has always resided in Bristol in this state. In 1857 she was there married to George H. Mitchell, and they continued to reside there until his death in 1896, and she resides

there still. He was a member of the mercantile firm of Morse, Mitchell & Williams, located at Chicago; and there the other two partners lived. On February 20, 1891, the firm being indebted to the First National Bank of Chicago over $20,000, upon their notes, the following paper was executed to said bank at Chicago, by the firm and each of its members.

> " We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they desire from time to time, and, in consideration of all and any such credit given we hereby guarantee any and all indebtedness now due, or which may hereafter become due, from them to said bank, to the extent of $30,000, and waive notice of the acceptance of this guaranty and of any and all indebtedness at any time covered by the same. This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by said The First National Bank of Chicago.
>
> "MORSE, MITCHELL & WILLIAMS,
> " FRANCIS E. MORSE,
> " FREDERICK C. WILLIAMS,
> " G. H. MITCHELL.
>
> " Chicago, Ill., February 20, 1891."

Said paper was prepared by the bank which had agreed with said firm to continue the line of credits to it, upon the execution of said paper by said firm and its individual members, and by Mrs. H. Drusilla Mitchell, then at her home in said Bristol. George H. Mitchell thereupon took said paper and brought it with him to his residence at Forestville in the town of Bristol, and there procured his wife, H. Drusilla Mitchell, to sign the same, and it was thereafter by him enclosed, addressed, and sent by mail to said Morse in Chicago, who delivered it to said bank.

Said bank continued to extend credit to Morse, Mitchell & Williams until the firm became insolvent and made an assignment for the benefit of its creditors on July 30, 1893. At the time of such insolvency and assignment, said bank held and owned the notes of Morse, Mitchell & Williams, renewals of unpaid portions of said first-mentioned notes, for $16,500, and

also sundry other notes of third parties endorsed by said firm. All these notes were payable at Chicago, and they have never been paid.

On the day of February, 1896, days before the attachment lien would have become perfected by the laws of Connecticut, H. Drusilla Mitchell made a voluntary assignment in insolvency under the statute law of Connecticut, and a trustee, one Edward A. Freeman, was appointed by the Probate Court of Bristol on her estate, represented by her to be insolvent.

On the 6th day of March, 1896, George H. Mitchell died.

Commissioners were appointed on Mrs. Mitchell's estate, and the bank presented the claim herein involved to them, and it was allowed, and the case was taken by her trustee in insolvency by appeal to the Superior Court, and upon reservation to the Supreme Court of Errors in Connecticut, where precisely the same facts were presented and passed upon (Record, p. 19).

This appeal was argued January 13, 1897, and decided February 23d following (Freeman's Appeal from Commissioners, 68 Conn., p. 533), and in June thereafter the suit brought by the bank against the Mitchells, December, 1895, came to trial in the Circuit Court before Judge Townsend, who decided adversely to the plaintiff, upon the grounds and for the reasons set forth in the Record, pp. 69–73.

Referring to Freeman's Appeal, Judge Townsend says in his memorandum of decision:

> "The court there held that defendant, being a married woman, had no capacity to make any such contract; that to sign the guaranty in Connecticut and to authorize her husband as her agent to deliver the guaranty at Chicago was to enter into a contractual relation in Connecticut which she had no capacity to do; that, therefore, she could not, while in Connecticut, authorize her husband to take the guaranty to Chicago and deliver it, and that, therefore, it was never delivered by her." (Record, p. 70.)

Again, in conclusion (Record, p. 73):

> "In these circumstances, I think, it is the duty of this court to follow the decision of the Connecticut court of last resort. Let judgment be entered for defendant."

Whereupon the First National Bank brought its writ of error to the Circuit Court of Appeals, which, on March 1st, reversed the decision which Judge Townsend had rendered in accordance with his idea that it was his duty to follow the Connecticut decision, Freeman's Appeal.

BRIEF.

The petitioner's claims for a removal of this action to this court for review, as stated in paragraphs 10 and 11 of her petition seem to be —

(1st) That the Circuit Court of Appeals erred in holding "that the case depended not upon the constructions of the local law of the State of Connecticut, but upon the application of the principles of general jurisprudence."

(2d) That the Court of Appeals erred in holding that the action could be maintained in the Circuit Court, notwithstanding the refusal of the courts of Connecticut to permit like action to be maintained in their jurisdiction," and

(3d) That it is unseemly and confusing that there should be diverse judgments between a federal court, sitting in that state, and the highest court of that state.

As to the first reason, the question involved did not in any way depend upon local law. The question was not whether Mrs. Mitchell could make a contract of guaranty in Connecticut. The question was not whether, according to Connecticut law, she possessed contractual ability, but whether, according to princi-

ples of general jurisprudence, a given act, to wit, power to mail a letter in person or by messenger, required contractual ability anywhere.

The court, in Freeman's Appeal, conceding the ability of Mrs. Mitchell to sign the paper in Connecticut and take it in person to Chicago and deliver it, and thereby make a contract enforceable in Chicago, and by comity enforceable in Connecticut, denied her ability to accomplish the same result by handing the signed paper to her husband to mail in Connecticut to Chicago.

This was not a local question, — not a question whether Mrs. Mitchell could make a contract of guaranty in Connecticut. We do not claim she could. It was, we repeat, a question as to whether the doing of a given act required contractual ability and is to be settled by the application of general principles of law in force everywhere.

As to petitioner's second reason, to wit, that the Circuit Court decides that by comity this action can be maintained in the federal court in the district, while the highest state court decides that it cannot in the state courts, our reply is that no such reason exists in fact. The court in Connecticut decided that no contract whatever existed. The question of comity never arose. The Connecticut court decided that the contract could not be enforced in Connecticut because there was no contract. The Circuit Court of Appeals decides that there was a contract — an Illinois contract — which is enforceable in the federal court for Connecticut. And Freeman's Appeal concedes that if there is an Illinois contract it is enforceable in Connecticut.

And to the third reason, to wit, the importance of harmonizing diverse judgments, a brief recurrence to the facts will, perhaps, be of service.

The plaintiff, a citizen of Illinois, came to Connecticut — as it was obliged to do — to bring the defendant into court; and, in the exercise of its constitutional right to the choice of a forum,

brought its suit in the Circuit Court of the United States and secured its claim by the attachment of defendant's property.

At that time the decided cases throughout the United States were favorable to the claims of the First National Bank of Chicago, to wit, that the contract of guaranty in question was an Illinois contract, and enforceable as such in Connecticut.

Milliken *vs.* Pratt, 125 Mass., 374.
Hill *vs.* Chase, 143 Mass., 129.
Bell *vs.* Packard, 69 Me., 105.
Wright *vs.* Remington, 41 N. J., see 48.
Baum *vs.* Birchall, 24 At. R., 629.
Phœnix Mut. Life Ins. Co. *vs.* Simon, 52 Mo. App., 357.
Bowles *vs.* Field, 78 Fed. R., 742.

And it was upon the authority of these cases that the bank proceeded to institute its suit.

But Mrs. Mitchell, after this suit was commenced and just before the attachment lien became perfect, made a voluntary assignment in insolvency under the laws of Connecticut, to a trustee for the benefit of creditors, who, she says, exist, and whom, she says, she is unable to pay. And it is her claim that by this act the federal court is practically ousted of jurisdiction in favor of the state courts of Connecticut. Commissioners were appointed by the Probate Court of Bristol in Connecticut to pass upon the validity of claims against her estate — the plaintiff's claim among the rest; and thus, while we waited in the federal court, the question of our claim was diverted to the state court by the arbitrary act of the defendant, and reached decision in the case of Freeman's Appeal.

This decision in favor of the trustee in insolvency of Mrs. Mitchell's estate was in no way a bar to the previously-commenced suit against Mrs. Mitchell herself in the federal court. It was the right of the bank to pursue its suit in the federal court, and we respectfully submit it was the duty of the court to treat the

question involved as the Circuit Court of Appeals has treated it, as a question to be determined by no law peculiar to any state, and not at all dependent upon local authority, but it is to be decided according to the general and uniform law which governs every court in the land.

> "It is settled doctrine that the federal courts, in the exercise of their co-ordinate jurisdiction, are not bound by the decisions of the state courts upon subjects of general law, but are at liberty to follow the convictions of their own judgment.
>
> Swift *vs.* Tyson, 16 Pet., 1.
> Railroad Co. *vs.* National Bank, 102 U. S., 14.
> Burgess *vs.* Seligman, 107 U. S., 20; 2 Sup. Ct., 10.
> Myrick *vs.* Railroad Co., 107 U. S., 102; 1 Sup. Ct., 425.
> Railway Co. *vs.* Prentice, 147 U. S., 106; 13 Sup. Ct., 261.
> Philips *vs.* Harding, 70 Fed. Rep., 471."

> "So when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or when there has been no decision of the state tribunals, the federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the state courts after such rights have accrued."

Burgess *vs.* Seligman, *supra*, p. 33.

Now, it is claimed that the judgments in the First National Bank of Chicago *vs.* H. Drusilla Mitchell in the Circuit Court of Appeals for the Second Circuit, and in Freeman's Appeal in the Supreme Court of Connecticut, are diverse, and for that reason the judgment in the first-named case should be reviewed by this court.

We respectfully submit that the circumstances under which the petitioner comes here, and which we have recited, do not entitle her to any favor, and the mere fact of the existing diver-

sity is not enough to entitle the petitioner to a review as a matter of right.

Lau on Bew's case, 141 U. S., 583, and 144 U. S., 47.
In *re* Woods, 143 U. S., 202.
Amer. Const. Co. *vs.* Jacksonville Railway, 148 U. S., 383.

Upon the ground we are now discussing, to wit, the desirability of securing uniformity of decision, no useful purpose can be served by a review which must terminate either in maintaining the present diversity of decision or in creating a similar diversity between the federal court and the Supreme Courts of Massachusetts, Maine, New Jersey, Pennsylvania, Missouri, and also the Circuit Court for the District of Indiana, so that review cannot secure uniformity of decision, but may create a much greater diversity.

Forsyth *vs.* Hammond, 166 U. S., 506, is not in point here, because in that case the diversity of decision was upon the subject of a local law of the state in which the federal court should have followed the decision of the Supreme Court of the State.

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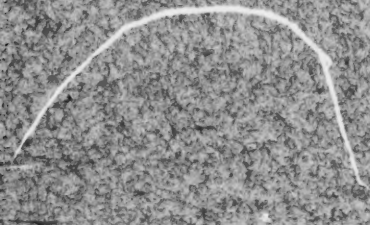
PERCY S. BRYANT,
Of Counsel for Respondent.



Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 280.

H. DRUSILLA MITCHELL, *Petitioner,*

vs.

THE FIRST NATIONAL BANK OF CHICAGO, *Respondent.*

Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

STATEMENT AND BRIEF FOR RESPONDENT.

On the 30th day of December, 1895, the First National Bank of Chicago brought suit against H. Drusilla Mitchell and G. H. Mitchell, her husband, both of Bristol, Conn., in the Circuit Court of the United States for the District of Connecticut, claiming $30,000 damages. This suit was commenced by writ of summons and attachment, and by virtue of said writ, property of the said H. Drusilla Mitchell amply sufficient to secure the claim was levied upon.

The facts upon which said suit was brought are as follows: H. Drusilla Mitchell has always resided in Bristol in the state of Connecticut. In 1857 she was there married to George H. Mitchell, and they continued to reside there until his death in 1896, and she resides there still. He was a member of the mercantile firm of Morse, Mitchell & Williams, located at Chicago; and there the other two partners lived. On February 20, 1891, the firm being indebted to the First National Bank of Chicago over $20,000, upon their notes, the follow-

ing paper was executed to said bank at Chicago, by the firm and each of its members.

> "We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they desire from time to time, and, in consideration of all and any such credit given, we hereby guarantee any and all indebtedness now due, or which may hereafter become due, from them to said bank, to the extent of $30,000, and waive notice of the acceptance of this guaranty and of any and all indebtedness at any time covered by the same. This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by said The First National Bank of Chicago.
>
> "Morse, Mitchell & Williams,
> "Francis E. Morse,
> "Frederick C. Williams,
> "G. H. Mitchell.
>
> "Chicago, Ill., February 20, 1891."

Said paper was prepared by the bank which had agreed with said firm to continue the line of credits to it, upon the execution of said paper by said firm and its individual members, and by Mrs. H. Drusilla Mitchell, then at her home in said Bristol. George H. Mitchell thereupon took said paper and brought it with him to his residence at Forestville in the town of Bristol, and there procured his wife, H. Drusilla Mitchell, to sign the same, and it was thereafter by him enclosed, addressed, and sent by mail to said Morse in Chicago, who delivered it to said bank.

Said bank continued to extend credit to Morse, Mitchell & Williams until the firm became insolvent, and made an assignment for the benefit of its creditors on July 30, 1893. At the time of such insolvency and assignment, said bank held and owned the notes of Morse, Mitchell & Williams, renewals of unpaid portions of said first-mentioned notes, for $16,500, and also sundry other notes of third parties endorsed by said

firm. All these notes were payable at Chicago, and they have never been paid.

On the 28th day of February, 1896, a few hours before the attachment lien would have become perfected by the laws of Connecticut, H. Drusilla Mitchell made a voluntary assignment in insolvency under the statute law of Connecticut, and a trustee, one Edward A. Freeman, was appointed by the Probate Court of Bristol on her estate, represented by her to be insolvent.

On the 6th day of March, 1896, George H. Mitchell died.

Commissioners were duly appointed on Mrs. Mitchell's estate by the Probate Court to receive and pass upon the claims against her estate, in accordance with the Insolvent Laws of Connecticut, and the bank presented its claim herein involved to them. It was by them allowed; whereupon Mrs. Mitchell's trustee in insolvency took an appeal from their decision to the Superior Court, and upon reservation, the cause went from that court to the Supreme Court of Errors of Connecticut, where the precise questions upon the same facts here presented were argued and passed upon.

This appeal was argued January 13, 1897, and decided February 23d following (Freeman's Appeal from Commissioners, 68 Conn., p. 533), and in June thereafter the suit brought by the bank against the Mitchells, December, 1895, came to trial in the Circuit Court for the District of Connecticut before Judge Townsend, who decided adversely to the plaintiff, upon the grounds and for the reasons set forth in the Record, pp. 11-13.

Referring to Freeman's Appeal, Judge Townsend says in his memorandum of decision:

"The court there held that defendant being a mar-

> ried woman, had no capacity to make any such contract; that to sign the guaranty in Connecticut and to authorize her husband as her agent to deliver the guaranty at Chicago was to enter into a contractual relation in Connecticut which she had no capacity to do; that, therefore, she could not, while in Connecticut, authorize her husband to take the guaranty to Chicago and deliver it, and that, therefore, it was never delivered." (Record, p. 11.)

Again, in conclusion (Record, p. 13):

> "In these circumstances, I think, it is the duty of this court to follow the decision of the Connecticut court of last resort. Let the judgment be entered for defendant."

Whereupon the First National Bank of Chicago brought its writ of error to the Circuit Court of Appeals for the Second Circuit, assigning as the ground of error that the Circuit Court had erred in holding that Exhibit "A" (Record, page 6) was not a contract of guaranty made in Chicago, in accordance with the laws of Illinois and enforceable in the Circuit Court, within and for the District of Connecticut.

The Circuit Court of Appeals sustained the contention of the bank and reversed the decision of the court below (Judge Lacombe dissenting), and rendered judgment for the plaintiff on the first day of March, 1899; and the defendant in error, on the 27th day of May, 1899, filed her petition to this court for a writ of *certiorari,* which petition was granted and the cause removed here.

> "The question in the case is whether a guaranty,
> "payable in the state of Illinois, and delivered to the
> "plaintiff there, signed by a married woman, at her
> "domicile, in Connecticut, to enable her husband to
> "procure credit with the plaintiff, delivered by her to
> "her husband, and sent by him by mail to the plaintiff,

" is a valid contract; she being disqualified by the law
" of Connecticut from making a contract as surety,
" and authorized to do so by the laws of Illinois. In
" other words, the question is whether the incapacity
" to contract by the law of the state of a person's dom-
" icile attaches to his contractual act in another state,
" where the disability has been removed."

First Nat. Bank of Chicago vs. Mitchell et al., 92 Fed. Rep., 565.

BRIEF.

Where in contemplation of law was the contract made, and by what law governed? Upon this point there is hardly room for controversy. The paper was signed in Connecticut, but it was delivered to the bank at Chicago and it was there that it became a contract. The mere signing of the paper does not make or locate a contract.

Daniel on Negotiable Instruments, Vol. 1, Sècs. 866 and 868.
Rorer Inter-State Law, pp. 49, 50.
Phoenix Mutual Life Ins. Co. vs. Simon Mo. App., 357.
Baum vs. Birchall, 150 Pa. St., 164, 24 Atl. R., 629.
Bell vs. Packard, 69 Me., 105.
Hill vs. Chase, 143 Mass., 129.
Milliken vs. Pratt, 125 Mass., 374.
First Nat. Bank vs. Mitchell et al.

If this paper is a contract at all it will be conceded that it is an Illinois contract to be governed by the law of Illinois at the time of execution, and that law was as follows:

> " Contracts may be made and liabilities incurred by
> " a wife, and the same enforced against her, to the
> " same extent and the same manner as if she were un-
> " married; but except with the consent of her husband,
> " she may not enter into or carry on any partnership
> " business, unless her husband has abandoned or de-
> " serted her, or is idiotic or insane, or is confined in the
> " penitentiary."

Rev. Stat. of Ill., 68, Sec. 6, Ed. of 1881.

The construction of this law by the Supreme Court of Illinois is found in the following cases:

Snell et al. vs. Snell et al., 123 Ill., 403.
Crum vs. Sawyer et al., 132 Ill., 432.

In the first of these cases (Snell et al. vs. Snell et al.), at page 409, the court says:

> "By the Acts of 1861 and 1874 married women "are to-day, and were at the time of the execution of "the mortgage in question, placed upon a common "footing with married men in respect to all property "rights, including the means to acquire, protect, and "dispose of the same. They may own, buy, sell, and "transfer any and all kinds of property, to the same "extent as married men or single women may, and "subject to no other or different conditions or re-"strictions. Not only so, but their duties and obli-"gations in respect to their rights and persons are the "same as those of others *sui juris*. Like other per-"sons they must perform their contracts, and if they "fail to do so, they are amenable to legal process to "the same extent as if they were unmarried."

If, then, Exhibit "A" is a contract made in Chicago and governed by the laws of Illinois, there would seem to be no room for doubt as to its validity as a contract of Mrs. Mitchell and its enforceability in other jurisdictions, and we do not understand that there is really any controversy on that point, even the Supreme Court of Connecticut conceding that in the following language:

> "Had Mrs. Mitchell been within the state of Illinois "when she signed the guaranty it may be that her "personal presence would have so far made her a "resident of that state as to subject her to its laws, in "respect to acts done within its jurisdiction."
>
> Freeman's Appeal, 68 Conn., 561.

But it is the contention of Mrs. Mitchell, in which she is sustained in Freeman's Appeal, that Exhibit "A" is not a contract anywhere.

The court says in effect, Mrs. Mitchell signed the paper and gave it to her husband to send by mail to Chicago — but

this act of sending required contractual ability and she performed it in Connecticut where she had no contractual ability.

That is to say, the opinion of Judge Baldwin concedes, as we understand, that while Mrs. Mitchell might sign the paper in Connecticut and then by taking the paper to Chicago and delivering it in person to the bank make a valid contract, the fact that after signing the paper she gave it to her husband in Connecticut to mail to Morse in Chicago, there to be delivered by him to the bank, is fatal to the validity of Exhibit "A" as a contract.

Our reply to this is, in the language of Milliken vs. Pratt, that if she could make the contract at Chicago by delivery in person she could make it by transmission by a messenger or through the post-office, "just as if the writer personally took the executed contract into the other state, or wrote or signed it there"; and that is what she did and all she did, and it made no difference whether the messenger was her husband or a boy called in from the street.

"It is not the place of delivery that controls, but the power of delivery" (Freeman's Appeal, p. 543). This power she confessedly had. Instead of exercising it by employing some intervening agency to transport herself and the paper to Chicago she puts it in the mail in Connecticut, employing for that purpose the hand of her husband as she might have employed the hand of a stranger.

If it required contractual ability to mail this paper to Morse by the hand of another, then there is a practical denial of the power of delivery, because it is impossible to conceive how she could get the paper to him, even if she carried it herself, without calling to her aid some act of another person as nearly approaching agency as the act of her husband in mailing the letter.

This is too narrow. Confronted by the same state of facts, the Supreme Court of Massachusetts found no reason to say that giving the guaranty to her husband to mail was the creation of an agency by the wife which required contractual ability.

That court distinctly said that by handing the paper to her husband, who transmitted it by mail to Maine, she herself made the contract in Maine, just as if the writer had personally taken the executed contract into Maine or had written or signed it there.

What Judge Baldwin calls the authority of the husband in the present case was no greater than and not different from the authority of the husband in Milliken vs. Pratt. This authority must be determined by the act done, and that was simply the service of a messenger. If that requires contractual ability then and then only can the authority of the Connecticut case be sustained against that of Massachusetts.

The trouble, as it seems to us, with the reasoning of Freeman's Appeal, is that it proceeds upon a confused notion of the *status* of Mrs. Mitchell. . . . "One of its (*i. e.*, Coverture's) incidents was a total disability to contract" (p. 539).

This is not accurate, even according to Freeman's Appeal, p. 541. It should be qualified; total disability to contract in Connecticut. In Bowles vs. Field, 78 Fed. Rep., 743, a case of a contract of suretyship for her husband by a married woman, we find in a discussion of the general subject, the following: "It was provided that a married woman should not enter into any contract of suretyship. It is clear that this limitation on her general power to contract has no extra territorial force. The law of this state could not prevent a married woman from making a contract elsewhere."

The *status* of Mrs. Mitchell contemplated by Judge Baldwin was confined to the limits of Connecticut. It did not extend to Chicago, where this contract of guaranty was made. Yet admitting this, Freeman's Appeal denies her power to make a contract in Chicago by means of a paper signed in Connecticut, for want of contractual ability to get the paper to Chicago for delivery.

This is not a local question. Not a question whether Mrs. Mitchell can make a contract of guaranty in Connecticut. We do not claim she could. It is a question as to whether the doing of a given act required contractual ability and is to be settled by the application of general principles of law in force everywhere.

It is not a question of the construction of any Statute of Connecticut or of any of the peculiarities of the policy of Connecticut law. We are agreed upon these points and Freeman's Appeal is simply a re-affirmation which no one disputes.

It is not even a question whether by comity the courts of Connecticut will enforce a contract made in Chicago; for the decision is that there was no contract at all to enforce and the Connecticut court never reached the question of comity.

It is a question of the extent of the contractual disability incident to coverture, not merely in Connecticut, but wherever it exists by virtue of the common law — it is a question whether a person under the disability of coverture in one state may by the transmission of a message — by mail, by telegraph, or by private messenger — complete a contract in another state where no such disability exists.

And this question is to be determined by no law peculiar to any state, and it is not at all dependent upon local authority, but it is to be decided according to the general and uniform law which governs every court in the land.

It is entirely unnecessary to prolong the discussion of the single question which this record presents, for such discussion would be merely a rehearsal of Milliken vs. Pratt and Bell vs. Packard.

In Milliken vs. Pratt, 125 Mass., 374, the facts were as follows:

> "The plaintiffs are partners doing business in Portland, Maine, under the firm name of Deering, Milliken & Co. The defendant is and has been since 1850 the wife of Daniel Pratt, and both have always resided in Massachusetts. In 1870, Daniel, who was then doing business in Massachusetts, applied to the plaintiffs at Portland for credit, and they required of him, as a condition of granting the same, a guaranty from the defendant to the amount of five hundred dollars, and accordingly he procured from his wife the following instrument:
>
> "'Portland, January 29, 1870. In consideration of one dollar paid by Deering, Milliken & Co., receipt of which is hereby acknowledged, I guarantee the payment to them by Daniel Pratt of the sum of five hundred dollars, from time to time as he may want — this is to be a continuing guaranty. Sarah A. Pratt.'
>
> "This instrument was executed by the defendant two or three days after its date, at her home in Massachusetts, and there delivered by her to her husband, who sent it by mail from Massachusetts to the plaintiffs in Portland; and the plaintiffs received it from the post office in Portland early in February, 1870." (P. 374.)

Gray, *C. J.*, in giving the opinion of the court, says, on page 376:

> "So if a person residing in this state signs and transmits, either by a messenger or through the post office, to a person in another state, a written contract, which requires no special forms or solemnities in its execution, and no signature of the person to whom it is addressed, and is assented to and acted on by him there,

the contract is made there, just as if the writer personally took the executed contract into the other state, or wrote and signed it there."

It is especially to be noted that this language is used with reference to a contract made by a person under the same want of contractual ability or capacity as that claimed for Mrs. Mitchell.

> "The law of Massachusetts, as then existing, did not allow her to enter into a contract as surety or for the accommodation of her husband or of any third person. Gen. Sts., c. 108, s. 3."
>
> Milliken vs. Pratt, pages 376 and 377.

From Bell vs. Packard, 69 Me., 105, we quote the whole statement of the court because it gives concisely the facts and the conclusions of law:

> Virgin, *J.* "On or before March 12, 1873, the "plaintiff, a resident of Skowhegan, holding an over- "due note against the defendant's husband, then a "resident of Cambridge, Mass., wrote the note in suit "and enclosed it in a letter addressed and mailed to "the latter in Cambridge, therein agreeing to surren- "der the old note upon the delivery of the new one "signed by him with a good surety. Accordingly, the "new note was signed by the defendant's husband and "herself, and mailed to and received by the plaintiff "at Skowhegan, who thereupon enclosed the old note "to Packard at Cambridge.
>
> "The case also finds that when the note was signed "by the defendant she was a married woman, and that, "by the law of Massachusetts, she could not thus bind "herself there.
>
> "In this state, however, a married woman may con- "tract for any lawful purpose. (R. S., c. 61, par. 4.)
>
> "Upon these facts the principal question for de- "termination is, where was the note in suit made or to "be paid. For although the personal incompetency

"of the defendant to contract as surety for her hus-
"band in Massachusetts will, so far as all such con-
"tracts made there are concerned, follow her every-
"where, still it will not be regarded as to such con-
"tracts made or to be performed here, where no such
"disqualification is acknowledged. (Polydore vs.
"Prince, Ware, 402.) Story Conft. of Laws, pars.
"101, 102. Our opinion is that the note was made
"and intended by the parties to be paid in Skowhegan.
"For although it was signed in Cambridge, it was de-
"livered to the payee in Skowhegan, and it was not
"a completed contract until delivered. This proposi-
"tion needs no citation or authorities, still we cite
"Lawrence vs. Bassett, 5 Allen, 140, as precisely in
"point."

"These adjudications proceed upon the considera-tions that the instrument was not effective for any pur-pose until delivered to the party for whose benefit it was prepared, that the place where it became operative was the place where the contract was made, and that the disqualification of the married woman in the state of her domicile did not accompany her in making a con-tract in a state where the disqualification had been re-moved. They are a consistent and logical application of that fundamental and most important rule of private international law that a contract valid by the law of the place where it is made is valid everywhere."

First National Bank vs. Mitchell, 92 Fed. Rep., 565.

And the single question is whether the conclusion of the Court of Appeals is right.

WM. C. CASE,
PERCY S. BRYANT,
Counsel.

POSTSCRIPT.

Since this cause was removed to this court by writ of certiorari, the petitioner after the receipt from us of the foregoing brief, has handed us a brief in which for the first time she makes a claim that the question here involved was res judicata by Freeman's Appeal, 68 Conn., 533.

The petitioner's counsel now says that having voluntarily submitted its claim to the test of the laws of Connecticut, the decision of the courts of Connecticut is binding and conclusive upon us, the Chicago National Bank.

The fundamental mistake of petitioner's counsel is, that the question here is a question under the local law of Connecticut. Nothing could be more erroneous.

We beg leave to call the attention to the following extract from First Nat. Bank of Chicago vs. Mitchell et al., 92 Fed. Rep., 567.

> "We are extremely reluctant to differ with the "Supreme Court of Connecticut in a case involving "the same facts, between substantially the same "parties, not only because the opinion of that learned "tribunal is always entitled to great consideration, but "also because it is, in a sense, unseemly that there "should be diverse judgments under such circum-"stances between a federal court sitting in that state "and the highest court of the state. But the case is "one which concerns the rights of a citizen of Illinois, "acquired before the decision of the state court; and "its decision depends, not upon the construction of "local laws, but upon the application of the principles "of general jurisprudence. In such cases the federal

"courts are in duty bound to exercise their own in-
"dependent judgment."

"It is settled doctrine that the federal courts, in the exercise of their co-ordinate jurisdiction, are not bound by the decisions of the state courts upon subjects of general law, but are at liberty to follow the convictions of their own judgment.

Swift vs. Tyson, 16 Pet., 1.
Railroad Co. vs. National Bank, 102 U. S., 14.
Burgess vs. Seligman, 107 U. S., 20; 2 Sup. Ct., 10.
Myrick vs. Railroad Co., 107 U. S., 102; 1 Sup. Ct., 425.
Railway Co. vs. Prentice, 147 U. S., 106; 13 Sup. Ct., 261.
Philips vs. Harding, 70 Fed. Rep., 471."

"So when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or when there has been no decision of the state tribunals, the federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the state courts after such rights have accrued."

Burgess vs. Seligman, *supra*, p. 33.

"When a question to be determined by the Su-
"preme Court is one of general law, it must be settled
"by a reference to all the authorities and not by the
"decisions of the highest state tribunal where the
"case arose. In such case the decisions of such state
"court are not binding. Baltimore & Ohio R. Co.
"vs. Baugh, 149 U. S., 368."

In this connection we call attention to Greenwood et al. vs. town of Westport, 63 Conn., 602.

It would clarify this discussion greatly if our friends would only remember that we are not contending for the ability of this petitioner to make the contract of guaranty in Connecticut, — we confess she could not, — but our contention is, that she could make it in Chicago, and that she did make it there, and that for that reason it was a valid contract.

We cannot forbear calling the attention of the court in reply to the new questions raised by counsel on their brief, pp. 21-25, to certain facts as follows:

That the respondent, a resident of Illinois, having a claim against the petitioner, a resident of the state of Connecticut, which it became necessary to litigate, having the right to choose between the federal courts and the courts of this state, chose the former, and brought its suit in the Circuit Court of the United States for the district of Connecticut, on the 30th day of December, 1895.

That on the 28th day of February, 1896, the petitioner made a voluntary assignment in insolvency under the statute law of Connecticut, and a trustee was appointed who took possession of all the property for the benefit of creditors, commissioners were appointed on her estate to receive and adjust claims, and it was necessary for the respondent to hand in its claim to said commissioners or be forever debarred from sharing in the assets of her estate. This the respondent did, without abandoning any right in the circuit court. This was not a voluntary act, but one made necessary by the act of the petitioner herself. The bank had no alternative. It had nothing upon which to predicate resistance to the state court.

In due course of procedure the question of the validity of this claim reached the Supreme Court of Connecticut, and was the question involved in the case, Freeman's Appeal, referred to by petitioner, which was decided February 23, 1897; subsequently on the day of June, 1897, the case pending in the circuit court was heard before Judge Townsend, the petitioner interposing no claim that the matter was already res judicata, and the case was tried upon the following answer:

"U. S. Circuit Court, District of Connecticut, May 26, 1897.

First National Bank of Chicago.

vs.

H. Drusilla Mitchell.

ANSWER.

1. Paragraphs 1 and 2 of the complaint are admitted.

2. Paragraph 3 is denied. Said writing Exhibit 'A' was signed by the defendant at her domicile in Bristol, in the state of Connecticut, and was not otherwise made, executed or delivered by her.

3. The defendant, at the time she signed said writing, was a married woman, the wife of George H. Mitchell of said Bristol, to whom she was married in 1857, at said Bristol where she then resided, and ever since has resided.

4. Paragraphs 4 and 5 are denied. Said co-partnership of Morse, Mitchell & Williams, at the time the said writing Exhibit 'A' was signed by the defendant, and prior thereto, was indebted to the plaintiff in a large sum, viz., $25,000, and more; and the plaintiff did not thereafter give said co-partnership additional credit, but such indebtedness was largely reduced.

T. M. MALTBIE,
Att'y for Defendant."

Upon this pleading the decision of the circuit court being for the petitioner, against the respondent, it took an appeal to the circuit court of appeals for the second circuit and no claim was there made that this question was already res judicata, and the decision of that court was in favor of the respondent, from which decision this writ of certiorari was brought to this court.

Even if there was anything in the claim of res judicata the petitioner is hardly entitled to avail herself of it. It is too late.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 280.

H. DRUSILLA MITCHELL, *Petitioner*,

vs.

THE FIRST NATIONAL BANK OF CHICAGO,
Respondent.

Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

ADDENDA TO STATEMENT AND BRIEF FOR RESPONDENT.

As to the question made by counsel for petitioners here, as to the effect of the stipulation which accompanied the reservation of the case of Freeman's Appeal from the Superior Court to the Supreme Court of Errors of Connecticut, we have this to say, that this is a point not made by the petitioners on their brief and therefore could not be noticed by us.

The claim of the petitioners seems to be, that we are concluded on account of the stipulation, by the result of that appeal, as by *res judicata*.

Our answer to this is, that, as we have before said, our being in the State Court at all was not voluntary on our part but compulsory. That the bank never consented to confer jurisdiction on the State Court, but the bank having been brought into that court against its will and compelled to a trial in the

State Court agreed upon the facts and assented to the reservation as a way to get through that court without unnecessary delay and expense. In short we consented to the reservation not to confer a jurisdiction, as the court already had that, but to save the necessity of a formal trial of the case which it was beyond the power of the bank to prevent.

The following is the law of Connecticut on the subject of reservation:

"SEC. 1114. Questions of law may be reserved by the Superior Court, Court of Common Pleas, or district court, in cases tried before either of them, for the advice of the Supreme Court of Errors: *provided*, that no such questions shall be reserved without the consent of all parties to the record in such cases; and the court making such reservation shall, in the judgment, decree, or decision made or rendered in such cases, conform to the advice of the Supreme Court of Errors."

Now, Freeman's appeal was decided by the Supreme Court February 23, 1897, before the case of the bank against Mitchell had been reached in the Circuit Court. On the 26th of May, 1897, Counsel for Mrs. Mitchell filed their plea in the Circuit Court. They also on the same day signed a stipulation and agreement that the case should be withdrawn from the jury and tried before the court, *p. 4 of Record*, and thereafter, on the 8th day of June, 1897, the facts in the case were agreed to by the parties and filed in the court, and it was formally agreed that these facts should be used by either party in the trial of the case of the bank against Mitchell, then pending in the Circuit Court. *pp. 4. 5 and 6 of Record.*

From all which it appears that the bank never made any such agreement or stipulation as in the contemplation of either party prevented it from having its day in the court of its own choice, and it also appears that never at any time did the petitioner or her counsel claim that the proceedings in the State Court could operate as a bar to the prosecution of the suit originally commenced by the bank in the Federal Court.

We cite the case used by us in argument but not quoted in our brief, viz:

Fuller *et ux vs.* Naugatuck Railway Co. 21 Conn. 556.

We also invite the attention of the Court to

Benjamin *vs.* Benjamin, 15 Conn. 347.

The statutes of 1877 printed at the suggestion of the Court are as follows:

"SEC. 2796. In case of marriages on or after April 20, 1877, neither husband nor wife shall acquire, by force of the marriage, any right to or interest in any property held by the other before, or acquired after, such marriage, except as to the share of the survivor in the property, as provided by law. The separate earnings of the wife shall be her sole property. She shall have power to make contracts with third persons, and to convey to them her real and personal estate, as if unmarried. Her property shall be liable to be taken for her debts, except when exempt from execution, but in no case shall be liable to be taken for the debts of the husband. And the husband shall not be liable for her debts contracted before marriage, nor upon her contracts made after marriage, except as provided in the succeeding section.

SEC. 2797. All purchases made by either husband or wife in his or her own name shall be presumed, in the absence of notice to the contrary, to be on his or her private account and liability; but both shall be liable when any article purchased by either shall have in fact gone to the support of the family, or for the joint benefit of both, or for the reasonable apparel of the wife, or for her reasonable support, while abandoned by her husband. It shall, however, be the duty of the husband to support his family, and his property when found shall be first applied to satisfy any such joint liability; and the wife shall in equity be entitled to an indemnity from the property of the husband, for any property of her own that shall have been taken, or for any money that she shall have been compelled to pay, for the satisfaction of any such claim.

SEC. 2798. In case of marriage existing prior to April 20, 1877, the provisions of the two preceding sections shall apply, whenever any husband and wife have entered, or shall hereafter enter, during marriage, into a written contract with each other for the mutual abandonment of all rights of either in the property of the other, under prior statutes, or at common law, and

for the acceptance instead thereof of the rights of said sections provided, which contract shall be recorded in the Court of Probate of the district, and in the town clerk's office of the town in which they reside. And thereupon, said provisions shall apply to such marriage."

General Statutes of Connecticut, 1888, page 610.

WILLIAM C. CASE,
PERCY S. BRYANT,
Counsel.

Supreme Court of the United States.

No. 45.—October Term, 1900.

H. Drusilla Mitchell, Petitioner, vs. The First National Bank of Chicago. } On writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[March 5th 1901.]

Mr. Justice Harlan delivered the opinion of the Court.

This is a suit upon a written guaranty held by the First National Bank of Chicago. It was signed in Connecticut by H. Drusilla Mitchell, she being a married woman, and by others, and was delivered in Chicago to the Bank under circumstances presently to be stated.

The Circuit Court held that the liability of Mrs. Mitchell should be determined by the laws of Connecticut. The Circuit Court of Appeals adjudged that as the writing was delivered to the Bank in Illinois, Mrs. Mitchell's liability was determinable by the laws of that State.

The case, however, presents the further question whether the precise matter in issue—the liability of Mrs. Mitchell notwithstanding her coverture at the time the guaranty was signed—was not adjudicated against the Bank in the courts of Connecticut prior to the final judgment in the present case; and if so, whether the Bank was concluded by that adjudication, which remains unmodified.

The case as presented by the pleadings and by the agreed facts set forth in a written stipulation of the parties is this:

In 1891 and prior thereto the firm of Morse, Mitchell & Williams, composed of Francis E. Morse, Frederick C. Williams and George H. Mitchell, (the latter being the husband of H. Drusilla Mitchell) was engaged in mercantile and real estate business at Chicago, Illinois, and kept an account with the First National Bank of that city.

The firm became indebted to the Bank in the sum of $20,000 or more, as evidenced by its notes. The Bank agreed to continue giving it credit upon the condition that the firm and its individual members, together with Mrs. Mitchell, would execute a certain paper which it had directed to be prepared.

Mitchell and his wife at the time resided in Connecticut, and did not have a residence elsewhere after their marriage, which occurred in 1857. He took the paper prepared by the Bank and brought it to his residence

in Connecticut and there procured his wife to sign the same, and it was thereafter by him enclosed, addressed and sent by mail to Morse in Chicago, who delivered the paper to the Bank.

The paper referred to was signed by Morse, Mitchell & Williams, Francis E. Morse, Frederick C. Williams, G. H. Mitchell and H. Drusilla Mitchell, and was as follows: "We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they may desire from time to time, and in consideration of all and any such credit given we hereby guarantee any and all indebtedness now due or which may hereafter become due from them to said Bank, to the extent of thirty thousand dollars, and waive notice of the acceptance of this guaranty and of any and all indebtedness at any time covered by the same. This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by said The First National Bank of Chicago. Chicago, Ill., Feb. 20th 1891."

The Bank continued to extend credit to Morse, Mitchell & Williams until the firm became insolvent and made an assignment for the benefit of its creditors on the 30th day of July 1893. At the time of such insolvency and assignment it held and owned the notes of Morse, Mitchell & Williams; renewals of unpaid portions of the above-mentioned notes, for $16,500; a note of Elizabeth Ewing endorsed by that firm; also notes of F. E. Morse & Son, with whom George H. Mitchell had no connection.

It appears that on the 28th day of December 1893 Mrs. Mitchell notified the executor of her father that she had assigned and transferred to the Bank all of her right, title and interest in so much of the testator's estate as was then undistributed, and authorized such executor to pay to the Bank all money and property coming to her or to which she was entitled from that estate.

The present action was brought by the Bank in the Circuit Court of the United States for the District of Connecticut on the 30th day of December 1895 against Mrs. Mitchell and her husband. The complaint alleged that in reliance upon and in consideration of the above guaranty and promise the Bank had extended credit and advanced money to Morse, Mitchell & Williams from time to time and within the period specified in the instrument to the amount of thirty thousand dollars; and for that amount it claimed judgment.

Mrs. Mitchell, by plea in abatement filed April 28th 1896, (her husband having died the month previous,) averred that at the time the above guaranty was executed, as well as at the commencement of the action, "she was a married woman, the wife of George H. Mitchell, since deceased, and was so married prior to April 27th 1877, viz., on the — day of ——— 1857, and has not entered into the contract authorized by section 2798, General Statutes of Connecticut."

The section here referred to as well as the two preceding sections are as follows:

"§ 2796. In case of marriages on or after April 20th 1877, neither husband nor wife shall acquire, by force of the marriage, any right to or interest in any property held by the other before, or acquired after, such marriage, except as to the share of the survivor in the property, as provided by law. The separate earnings of the wife shall be her sole property. She shall have power to make contracts with third persons, and to convey to them her real and personal estate, as if unmarried. Her property shall be liable to be taken for her debts, except when exempt from execution, but in no case shall be liable to be taken for the debts of the husband. And the husband shall not be liable for her debts contracted before marriage, nor upon her contracts made after marriage, except as provided in the succeeding section.

"§ 2797. All purchases made by either husband or wife in his or her own name shall be presumed, in the absence of notice to the contrary, to be on his or her private account and liability; but both shall be liable when any article purchased by either shall have in fact gone to the support of the family, or for the joint benefit of both, or for the reasonable apparel of the wife, or for her reasonable support, while abandoned by her husband. It shall, however, be the duty of the husband to support his family, and his property when found shall be first applied to satisfy any such joint liability; and the wife shall in equity be entitled to an indemnity from the property of the husband, for any property of her own that shall have been taken, or for any money that she shall have been compelled to pay, for the satisfaction of any such claim.

"§ 2798. In case of marriage existing prior to April 20th 1877 the provisions of the two preceding sections shall apply, whenever any husband and wife have entered, or shall hereafter enter, during marriage, into a written contract with each other for the mutual abandonment of all rights of either in the property of the other, under prior statutes, or at common law, and for the acceptance instead thereof of the rights in said sections provided, which contract shall be recorded in the Court of Probate of the district, and in the town clerk's office of the town in which they reside. And thereupon, said provisions shall apply to such marriage." *Gen. Stat. Conn.* 1888, *pp.* 610, 611.

It appears that at a Court of Probate, held at Bristol, Connecticut, on the 30th day of September 1896—after the institution of the present suit in the Federal court and after commissioners in insolvency in the Probate Court had made a report on the estate of Mrs. Mitchell—Edward A. Freeman, trustee of that estate, took an appeal to the Superior Court at Hartford from "the doings of said commissioners in allowing a claim in in favor of the First National Bank of Chicago"—*the same claim on which the Bank brought this suit.*

In the Superior Court the Bank filed a statement in which it was alleged that its claim was secured by an assignment to it of Mrs. Mitchell's interest in the estate of her father. Mrs. Mitchell filed an answer denying certain allegations in that statement and pleading among other things her coverture at the time of the signing of the writing relied on by the the Bank and her residence in Connecticut during all her married life and since. To this answer the Bank filed a reply. The parties—the Bank and the trustee Freeman—consented in writing that the case be reserved "for the advice of the Supreme Court of Errors of the State as to the judgment to be therein rendered," and *they united in requesting the Superior Court* "to so reserve the case upon the issues joined and the agreed facts." In conformity with this request the case was reserved. At the same time the parties filed in that court their agreed statement of facts.

It may be here stated that in Connecticut "questions of law may be reserved by the Superior Court, Court of Common Pleas, or District Court, in cases tried before either of them, for the advice of the Supreme Court of Errors: *Provided*, That no such questions shall be reserved without the consent of all parties to the record in such cases; and the court making such reservation *shall*, in the judgment, decree or decision made or rendered in such cases, *conform to the advice of the Supreme Court of Errors.*" *Gen. Stat. Conn.* 1888, *p.* 260, § 1114.

The Supreme Court of Errors of Connecticut advised the Superior Court to disallow every part of the claim of the Bank. Speaking by Judge Baldwin it said, among other things: "Mrs. Mitchell, being a citizen of Connecticut, married a citizen of Connecticut in 1857, and they continued to reside in this State until his death. Her marriage gave her, under the laws of the State then in force, substantially the status which belonged to a married woman at common law. Her personal identity, from a judicial point of view, was merged in that of her husband. Thereafter, during coverture, she could make no contract that would be binding upon her, even by his express authority. 1 *Swift's Dig.* 30. If she assumed to make such a contract, it was absolutely void. These personal disabilities the common law imposed partly for the protection of the husband and partly for that of the wife. To preserve what property rights remained to her, as far as might be, against his creditors, various statutes were from time to time enacted, until this long ago became recognized as the established policy of the State. *Jackson* v. *Hubbard*, 36 *Conn.* 10, 15. These statutes were mainly designed to protect her against others. The common law was sufficient to protect her against herself, and prior to 1877 it precluded her from making any contract as surety for her husband. *Kilbourn* v. *Brown*, 56 *Conn.* 149. A statute of that year establishes a different rule for women married after its enactment, but does not enlarge the rights of those previously married. *Gen. Stats. Conn.* § 2796. Whenever a peculiar status

is assigned by law to the members of any particular class of persons affecting their general position in or with regard to the rest of the community, no one belonging to such class can vary by any contract the rights and liabilities incident to this status. *Anson's Principles of Contract,* 328. If he could, his private agreements would outweigh the law of the land. *Jus publicum privatorum pactis mutari non potest.* Coverture constitutes such a status, and one of its incidents in this State at the time of Mrs. Mitchell's marriage was a total disability to contract. So far as contracts of suretyship for their husbands are concerned, the disability of women married before 1877 remains absolute unless both husband and wife have executed for public record a written contract by which both accede to the provisions of the statute of that year and accept the rights which it offers to them. *Gen. Stat.* § 2798. No such contract was ever executed by Mrs. Mitchell.

"The claim in favor of the First National Bank of Chicago, which has been allowed by the commissioners on her estate, was founded on a debt due from a mercantile firm in Illinois of which her husband was a member, for which she had assumed to make herself responsible, as guarantor, by a writing dated in Illinois, but signed in this State. . . He [the husband] sent the paper, as soon as it was completed, not to the Bank, but to another of the principals. If he represented any one but himself, it was his copartner. The delivery of the paper by his wife to him, therefore, after her signature had been attached, was not a delivery to the Bank, but simply purported to give him authority as her agent to make or procure such a delivery at some subsequent time. . . Engagements which coverture prevents a woman from making herself she cannot make through the interposition of an agent whom she assumes to constitute as such in the State of her domicil. If this were not so the law could always be evaded by her appointment of an attorney to act for her in the execution of contracts. No principle of comity can require a State to lend the aid of its courts to enforce a security which rests on a transgression of its own law by one of its own citizens, committed within its own territory. Such was, in effect, the act by which Mrs. Mitchell undertook to do, what she had no legal capacity to do, by making her husband the agent to deliver the guaranty to the Bank. He had no more power to make it operative by delivery in Chicago to one of his creditors in Illinois than he would have had to make it operative here had it been drawn in favor of one of his creditors in Connecticut. It is not the place of delivery that controls, but the power of delivery. The Superior Court is advised to disallow all and every part of the claim of the First National Bank." *Freeman's Appeal,* 68 *Conn.* 533, 542.

The opinion of the Supreme Court of Errors of Connecticut was rendered February 23d 1897; and on March 2d 1897 the Superior Court

in conformity with the advice of the former court entered judgment disallowing the claims of the Bank against the estate of Mrs. Mitchell.

After this judgment the Bank proceeded with the case commenced by it in the Circuit Court of the United States on the 30th day of December 1895, just as if nothing had occurred in the State courts affecting its claim. Mrs. Mitchell on May 22d 1897 filed in that court a substitute plea in abatement, asking judgment in her favor, "because she signed said writing, Exhibit 'A', [the writing of February 20th 1891] at her domicil in Bristol, in the State of Connecticut, and was, at the time of signing the same, a married woman, the wife of said George H. Mitchell, to whom she was married in 1857, at said Bristol, where she has ever since resided." She also filed on May 26th 1897 an answer, alleging that she signed said guaranty at her domicil in Connecticut and not elsewhere, she being then a married woman, and stating that said copartnership at the time the alleged guaranty was signed, and prior thereto, "was indebted to the plaintiff in a large sum, viz., $25,000 and more, and the plaintiff did not thereafter give said copartnership additional credit, but such indebtedness was largely reduced." Subsequently, June 8th 1897, the parties having previously stipulated in writing to waive a jury, filed in the Circuit Court an agreed statement of facts, which did not materially differ from the one filed in the Superior Court at Hartford.

The Circuit Court of the United States gave judgment for the defendant. It referred to the above decision of the Supreme Court of Errors of Connecticut, and said among other things: "The capacity of citizens of a State, so long as they actually remain within the borders of the State, would seem to be a matter of local law, to be controlled by the laws of the State, and not to be evaded by the simple device of sending or mailing a letter to some other State. Suppose that the laws of the State should provide that infants might attain their majority and become capable of contracting at the age of eighteen years, could it be held that a minor eighteen years old in Connecticut could, by mailing a contract to that State, subject his property in Connecticut to execution against the will of his guardian and against the determination of the legislature and courts of Connecticut? . . In the present case, the law by which the invalidity of a contract is established is the common law, and the decisions that a married woman has capacity to make such contracts are founded upon local statutes. In these circumstances I think it is the duty of this court to follow the decision of the Connecticut court of last resort." 84 *Fed. Rep.* 90.

The case was carried by the Bank to the Circuit Court of Appeals, in which court the judgment was reversed with instructions to the Circuit Court to render a judgment in favor of the Bank for the amount due by the terms of the guaranty of February 20th 1891. That court, one of its members dissenting, held that the guaranty in question became effective and

was to be deemed to have been made when delivered in Illinois, and that its validity as a contract was determinable by the law of that State and not by the laws of Connecticut. The court said: "We are extremely reluctant to differ with the Supreme Court of Connecticut in a case involving the same facts, between substantially the same parties, not only because the opinion of that learned tribunal is always entitled to great consideration, but also because it is, in a sense, unseemly that there should be diverse judgments under such circumstances between a Federal court sitting in that State and the highest court of the State. But the case is one which concerns the rights of a citizen of Illinois, acquired before the decision of the State court; and its decision depends, not upon the construction of local laws, but upon the application of the principles of general jurisprudence. In such cases the Federal courts are in duty bound to exercise their own independent judgment. In view of the decision of the Supreme Court of Connecticut, we should be glad to certify the question which we have thus considered to the Supreme Court for its instructions, but we do not feel authorized to do so, especially as that tribunal, under the power to issue a certiorari, can review our judgment if it sees fit." 92 *Fed. Rep.* 565; — *U. S. App.* ——.

In the view we take of this case it is not necessary to inquire whether the liability of Mrs. Mitchell under the writing of February 20th 1891 was determinable by the laws of Connecticut or by the laws of Illinois. If, as the Bank contends, that writing became a contract when delivered to the Bank in Illinois, and not before, and if, as is also contended, Mrs. Mitchell was liable thereon by the laws of that State, although she was a married woman at the time of signing the writing in Connecticut where she resided, the question remains whether the parties were not concluded by the final judgment of the Hartford County Superior Court based upon the judgment rendered in the Supreme Court of Errors of Connecticut. There can be no doubt that the identical question now presented—namely, as to the liability of Mrs. Mitchell on the writing in suit notwithstanding her coverture—arose in the Superior Court upon appeal from the allowance of the Bank's claim by the Probate Court; and, as we have seen, the parties united in the request that the case be reserved for the advice of the Supreme Court of Errors of Connecticut, and the the latter court upon full consideration advised the disallowance of all and every part of the Bank's claim. To that advice the Superior Court, as it was compelled to do by the laws of Connecticut, conformed in its final adjudication of the Bank's claim. The Bank then turned to the Federal court, as if nothing had been adjudicated in the courts of Connecticut, and sought a judgment in support of the same claim that had been rejected by the State court in the case between it and the trustee of the estate of Mrs. Mitchell.

We are of opinion that the Bank was concluded by the judgment in the State court. In the recent case of *Southern Pacific Railroad Co.* v. *United States*, 168 *U. S.* 1, 48, we said, after an extended examination of the adjudged cases, that "a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for the aid of judicial tribunals would not be invoked for the vindication of rights of persons and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them." The authorities cited in the margin illustrate the rule.*

It is said that the question here presented was one of general jurisprudence involving the rights of citizens of different States, and that the Circuit Court was not bound to accept the views of the State court but was at liberty, indeed under a duty, to follow its own independent judgment as to the legal rights of the parties. *Burgess* v. *Seligman*, 107 *U. S.* 20. If it were true that the question was in whole or in part one of general law, the thing adjudged by the State court when properly brought to the attention of the Circuit Court would still be conclusive between the same parties or their privies. Whatever may be the nature of a question presented for judicial determination—whether depending on Federal, general or local law—if it be embraced by the issues made, its determination by a court having jurisdiction of the parties and of the subject-matter binds the parties and their privies so long as the judgment remains unmodified or unreversed.

It is also said that after this suit was brought in the Federal court the defendant made a voluntary assignment in insolvency under the statutes

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* *Hopkins* v. *Lee*, 6 *Wheat.* 109, 113; *Smith* v. *Kernochen*, 7 *How.* 198, 216; *Thompson* v. *Roberts*, 24 *How.* 233, 240; *Washington, Alexandria & Georgetown Steam Packet Co.* v. *Sickles*, 24 *How.* 333, 340, 341, 343; *Russell* v. *Place*, 94 *U. S.* 606, 608; *Cromwell* v. *Sac County*, 94 *U. S.* 351; *Campbell* v. *Rankin*, 99 *U. S.* 261; *Lumber Co.* v. *Buchtel*, 101 *U. S.* 638; *Bissell* v. *Spring Valley Township*, 124 *U. S.* 225, 230; *Johnson Co.* v. *Wharton*, 152 *U. S.* 252; *Last Chance Mining Co.* v. *Tyler Mining Co.*, 157 *U. S.* 683, 691; *Forsyth* v. *Hammond*, 166 *U. S.* 506, 518; *New Orleans* v. *Citizens' Bank*, 167 *U. S.* 371, 396.

of Connecticut; that a master was appointed who took possession of all of the property assigned for the benefit of creditors; that commissioners were appointed to receive and adjust claims on her estate; and that it was necessary for the Bank to present its claims to the commissioners or be forever barred from sharing in the assets of such estate. Therefore it is contended that the Bank's appearance in the State court was compulsory, and that such appearance, although followed by an adverse final judgment in the State court, did not operate as a surrender of its right to thereafter proceed to final judgment in the Federal court in respect of the same matter.

These suggestions are without force. We do not suppose that the Bank acquired any lien upon the property of Mrs. Mitchell merely by bringing its suit in the Federal court, or that the bringing of that suit prevented her from making such an assignment of her property for the benefit of creditors as the laws of the State of which she was a citizen permitted. It may be that the Bank could not have shared in the particular estate assigned and in the custody of the trustee Freeman without presenting its claim to the commissioners. Still, if the Bank had not appeared in the State court nothing that could have been done by the tribunal administering the assigned estate would have relieved Mrs. Mitchell altogether from any obligation to the Bank which she had legally incurred by having signed the guaranty of February 20th 1891. The Bank could have kept out of the State court and proceeded to a final judgment in the Federal court taking its chances to enforce the collection of such judgment. Instead of doing that it presented its claim to the commissioners and invoked the judgment of the highest court of Connecticut upon the question of the liability of Mrs. Mitchell notwithstanding her coverture at the time she signed the writing in question. Its appearance in the State court was not, in any legal sense, a compulsory one, but was made in its own interest for the purpose of obtaining a share of the proceeds of certain property assigned for the benefit of creditors. It united with the trustee in having the case reserved for the advice of the Supreme Court of Errors upon the question whether the coverture of Mrs. Mitchell constituted a defense against its claim; knowing, as it must be conclusively presumed it did know, that such advice when given would under the laws of Connecticut absolutely control the final action of the Superior Court. Having failed in its effort to have the State court adjudge that Mrs. Mitchell was liable on the writing in suit notwithstanding her coverture at the time of signing it, the Bank cannot be permitted to relitigate that question in disregard of the final judgment against it and seek a judgment in another court which, if rendered in its favor, could rest only upon grounds which the State court had held, as between it and the trustee of Mrs. Mitchell's estate, could not, in law, be sustained. Although it does not appear that Mrs. Mitchell was, in form, a party to the proceedings in the State court,

she was in privity with the trustee who held her estate for the benefit of creditors. It was admitted at the bar that a judgment in that court in favor of the Bank would have concluded the question of her liability. If the writing in suit was binding upon her, notwithstanding her coverture when signing it, then the Bank was a creditor entitled to its proportionate part of the proceeds of the estate to be administered for creditors. When, therefore, the State court adjudged that the coverture of Mrs. Mitchell protected her against liability for any claim based upon that writing, and that the Bank was not entitled, in virtue of its provisions, to be regarded as a creditor of Mrs. Mitchell, there was a judicial determination by a tribunal of competent jurisdiction of the material question involved in this case, and consequently the Bank could not, in a suit in another court against Mrs. Mitchell, reopen that question. The Circuit Court had before it, by agreement of the parties, a copy of the record of the proceedings in the State courts; and upon the evidence furnished by that record the question was distinctly presented whether those proceedings in connection with the defendant's plea of coverture constituted a defense against the plaintiff's cause of action based upon the writing of February 20th 1891.

In our opinion, for the reasons we have given, the Circuit Court properly adjudged that the decision of the State court should control the rights of the parties in this case, and therefore that the law was for the defendant.

The judgment of the Circuit Court of Appeals must be reversed, and the judgment of the Circuit Court is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.